



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-0994]

RIN 1625-AA00

Safety Zone; Unknown substance in the vicinity of Kelley's Island Shoal, Lake Erie; Kelley's Island, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of the Lake Erie in the vicinity of Kelley's Island Shoal, OH. This zone is intended to restrict vessels from a portion of Lake Erie due to the presence of an unknown substance emanating from an unknown vessel. This temporary safety zone is necessary to protect people and vessels from the hazards associated with this event.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 8 p.m. November 24, 2015. For the purposes of enforcement, actual notice will be used from 2 p.m. October 25, 2015,

until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2015-0994 and are available online by going to www.regulations.gov, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground floor, Room W12-140, 1200 New Jersey Avenue SE, Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, contact or email LT Jennifer Disco, U.S. Coast Guard Marine Safety Unit Toledo, telephone (419)418-6000, email Jennifer.M.Disco@USCG.MIL.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive Order
NAD 83	North American Datum of 1983

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard received notification of the unknown substance emanating from an unknown vessel on the evening of October 23, 2015. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from the possible hazards associated with this unknown substance.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, 33 CFR 1.05-1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. The Captain of the Port Detroit (COTP) has determined that a temporary safety zone is necessary to ensure the safety of vessels from the unknown hazards associated with this substance. Such hazards include the possibility of an inhalation hazard that may cause death or serious bodily harm.

Establishing a safety zone to control vessel movements around the location of the unknown substance will help ensure the safety of persons and property during assessment and response activities and help minimize the associated risks. Therefore, this rule will remain in place for the time stated herein but will be canceled if response activities cease before 24 November 2015.

IV. Discussion of Rule

This rule establishes a safety zone from 2 p.m. on October 25, 2015 until 8 p.m. on November 24, 2015. The safety zone will encompass all U.S. navigable waters of Lake Erie within a 1000 foot radius of 41°38'21"N., 82°29'35"W (NAD 83).

Entry into, transiting, or anchoring within the safety

zone is prohibited unless authorized by the COTP or a designated representative. Vessel operators must contact the COTP or his on-scene representative to obtain permission to transit through this safety zone. The COTP or his on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866 or under section 1 of E.O. 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with

other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short duration, and it is designed to minimize the impact on navigation. Moreover, under certain conditions, vessels may still transit through the safety zone when permitted by the COTP.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in designated

portions of Lake Erie from 2 p.m. on October 25, 2015 until 8 p.m. on November 24, 2015.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the Regulatory Planning and Review section. Additionally, before the enforcement of the zone, Coast Guard Sector Detroit will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section above. The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Tribal Implications

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and is therefore categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An

environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Energy Effects

This action is not a "significant energy action" under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures,

Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0994 to read as follows:

§ 165.T09-0994 Safety Zone; Unknown Substance in the Vicinity of Kelley's Island Shoal, Lake Erie; Kelley's Island, OH.

(a) Location. The following area is a temporary safety zone: Unknown substance from an unknown vessel in the vicinity of Kelley's Island Shoal, Lake Erie; Kelley's Island, OH. The safety zone will encompass all U.S. navigable waters of Lake Erie within a 1000 foot radius of 41°38'21"N, 82°29'35"W. All coordinates are North American Datum 1983 (NAD 83).

(b) Enforcement period. The safety zone described in paragraph (a) of this section will be enforced from 2 p.m.

on October 25, 2015 until 8 p.m. on November 24, 2015.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit (COTP) or his designated on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP, via the Command Center, or his designated on-scene representative.

(3) The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the COTP to act on his behalf.

(4) Vessel operators must contact the COTP via the Command Center to obtain permission to enter or operate within the safety zone. The COTP may be contacted via VHF Channel 16 or at 313-568-9560. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP, via the Sector Command Center or his on-scene representative.

Dated: October 25, 2015.

Scott. B. Lemasters,

Captain, U.S. Coast Guard,

Captain of the Port Detroit.

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