



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0493]

RIN 1625-AA00

Safety Zones; Tug Nancy Anne, Jack-Up Barge JUB-100, and M/V Highland Eagle operating in the Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones in the Captain of the Port, Sault Sainte Marie zone. These temporary safety zones are necessary to protect the public, and contractors from potential hazards associated with geotechnical sampling by persons conducting bore hole drilling in the Straits of Mackinac. Vessels will not be able to operate in certain U.S. navigable waters in the Straits of Mackinac within 500 yards of the Tug Nancy Anne, Jack-Up Barge JUB-100, and the Motor Vessel (M/V) Highland Eagle without authorization from the Captain of the Port.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 30 September 2019. For the purposes of enforcement, actual notice will be used from June 17, 2019, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0493 in the “SEARCH” box and click "SEARCH." Click on “Open Docket Folder” on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Sean V. Murphy, Sector Sault Sainte Marie Waterways Management Division, U.S. Coast Guard at telephone (906)635-3223, and email Sean.V.Murphy@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
M/V	Motor Vessel

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and an 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 an opportunity to comment when the agency, for good cause, finds that those procedures are impracticable, unnecessary, or contrary to the public interest. Pursuant to 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 and contrary to the public interest. The final details of the specific dates, vessel names, and safety zone distances concerning the safety zones were not finalized within a sufficient time to allow for notice and a subsequent 30-day comment period before the commencement of geotechnical sampling

operations. Delaying this rule to allow for a notice and comment period would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the potential hazards associated with geotechnical sampling.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with geotechnical sampling.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards associated with geotechnical sampling starting June 17, 2019, will be a safety concern for anyone within a 500-yard radius of all U.S. navigable waters of the Tug Nancy Anne, Jack-Up Barge JUB-100, and the Motor Vessel (M/V) Highland Eagle conducting bore hole drilling. This rule is needed to protect personnel and vessels in the navigable waters within the safety zones while geotechnical sampling is conducted.

IV. Discussion of the Rule

This rule establishes two safety zones from June 17, 2019 through September 30, 2019. The safety zones will cover all navigable waters within 500 yards of the Tug Nancy Anne, Jack-Up Barge JUB-100, and M/V Highland Eagle. The duration of the zone is intended to protect personnel and vessels in these navigable waters while vessels conduct geotechnical sampling. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below, we summarize our analyses based on a number of these statutes and Executive Orders, and we also discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and location of the safety zones. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Straits of Mackinac. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

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 will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Laws 104-121), we want to assist small entities in understanding this rule. If the 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.

Small businesses may send comments of the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small 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 Indian Tribal Governments

A rule has implications for federalism under Executive Order 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

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 an 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 Directive 023-01 and Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-

4370f), and have determined that this action is one of a category of actions that does not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones that will prohibit entry within 500 yards of U.S. navigable waters of vessels, barges, and machinery being used by personnel to conduct geotechnical sampling. It is categorically excluded from further review under paragraph L60[a] in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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.

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: 46 U.S.C. 70034, 70051; 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.T09-0493 to read as follows:

§ 165.T09-0493 Safety Zones; Tug Nancy Anne, Jack-Up Barge JUB-100, and M/V

Highland Eagle operating in the Straits of Mackinac, MI.

(a) Location. The following areas are safety zones: All navigable waters within 500 yards of Tug Nancy Anne and Jack-Up Barge JUB-100 while conducting geotechnical sampling in the Straits of Mackinac, and all navigable waters within 500 yards of Motor Vessel (M/V) Highland Eagle while conducting geotechnical sampling in the Straits of Mackinac.

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

(2) Before a vessel operator may enter or operate within the safety zones, they must obtain permission from the Captain of the Port, Sault Sainte Marie, or his on-scene representative via VHF Channel 16 or telephone at (906) 635-3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

(d) Enforcement period. This section will be enforced from June 17, 2019 through September 30, 2019.

Dated: June 13th, 2019.

P.S. Nelson,

Captain, U.S. Coast Guard,

Captain of the Port Sault Sainte Marie.

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