



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0165]

RIN 1625-AA00

Safety Zone, Atlantic Intracoastal Waterway, Camp Lejeune, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Atlantic Intracoastal Waterway at Camp Lejeune, North Carolina in support of military training exercises. This temporary safety zone is intended to restrict vessel traffic from a portion of the Atlantic Intracoastal Waterway between Mile Hammock Bay and Onslow Beach Swing Bridge during military training operations. This action is intended to restrict vessel traffic on the Atlantic Intracoastal Waterway to protect mariners and training exercise participants from the hazards associated with military training operations. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or designated representative.

DATES: This rule is effective from 6:00 a.m. on March 18, 2020, through 8:00 p.m. on March 19, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0165 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 on this rule, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772–2221, email: Matthew.I.Tyson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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 the Coast Guard was notified of the final details of the military training exercise on March 9, 2020. The Coast Guard must take immediate action to protect mariners and training

exercise participants from the hazards associated with military training operations. It is impracticable and contrary to the public interest to publish an NPRM because a final rule needs to be in place by March 18, 2020, to minimize potential danger to mariners and training exercise participants.

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**. Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed to protect mariners and training exercise participants from the hazards associated with military training operations beginning on March 18, 2020.

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 COTP North Carolina has determined that there are potential hazards associated with military training operations on the Atlantic Intracoastal Waterway at Camp Lejeune, North Carolina. This rule is necessary to protect safety of life from the potential hazards associated with military training operations.

IV. Discussion of the Rule

This rule establishes a safety zone from 6:00 a.m. on March 18, 2020, through 8:00 p.m. on March 19, 2020. The safety zone will include all navigable waters of the Atlantic Intracoastal Waterway from Mile Hammock Bay, approximate position 34°33'00"N, 077°19'38"W, to Onslow Beach Swing Bridge, approximate position 34°34'23"N, 077°16'19"W (NAD 1983). Part of the military training operations involves assembling a temporary bridge from shore to shore, completely blocking the

navigable channel. To help facilitate commercial and recreational traffic, if vessels are waiting to transit, then the waterway will open every two hours to allow vessels to pass through the zone. On-scene safety personnel will direct vessels when it is safe to pass through the zone. The duration of this zone is intended to protect mariners from the hazards associated with military training operations. No vessel or person will be permitted to enter the safety zone unless specifically authorized by the Captain of the Port North Carolina 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 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, location, and duration of the safety zone. The 38-hour regulation enforcement should not overly burden vessel traffic based on the short duration of the period and allows for vessels to pass through the zone every two hours if needed. This safety zone will only impact a small portion of the

Atlantic Intracoastal Waterway at Camp Lejeune, NC and vessel traffic is expected to be low at this time of year. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. Vessels are prohibited from entering the safety zone unless specifically authorized by the Captain of the Port North Carolina or a designated representative.

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 Law 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 call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on 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 business. 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.

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, Rev. 1, associated implementing instructions, and Environmental Planning 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 do not individually or cumulatively have a significant effect on the human environment. This rule involves involves a safety zone lasting 38 hours that will prohibit entry into a portion of the Atlantic Intracoastal Waterway at Camp Lejeune, NC. It is categorically excluded from further review under paragraph L(60)a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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 recordkeeping 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.T05-0165 to read as follows:

§ 165.T05-0165 Safety Zone; Atlantic Intracoastal Waterway, Camp Lejeune, NC.

(a) Location. The following area is a safety zone: all navigable waters of the Atlantic Intracoastal Waterway between Mile Hammock Bay, approximate position 34°33'00"N, 77°19'38"W, to Onslow Beach Swing Bridge approximate position 34°34'24"N, 77°16'19"W (NAD 1983) at Camp Lejeune, NC.

(b) Definitions. As used in this section---

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Training exercise participants means persons and vessels involved in military training operations.

(c) Regulations. (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) With the exception of the training exercise participants, entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone immediately upon activation.

(3) Waiting vessels will be allowed to transit through the zone every two hours during enforcement, when directed by the Coast Guard, designated security vessels, or on-scene safety vessels.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910-343-3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 6:00 a.m. on March 18, 2020, through 8:00 p. m. on March 19, 2020.

Dated: March 12, 2020.

Bion B. Stewart,
Captain, U. S. Coast Guard,
Captain of the Port North Carolina.

[FR Doc. 2020-05533 Filed: 3/17/2020 8:45 am; Publication Date: 3/18/2020]