



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0172]

RIN 1625-AA00

Safety Zone; Pacific Ocean, Kilauea Lava Flow Ocean Entry on Southeast Side of Island of Hawaii, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters surrounding the entry of lava from Kilauea volcano into the Pacific Ocean on the southeast side of the Island of Hawaii, HI. The safety zone will encompass all waters extending 300 meters (984 feet) in all directions around all entry points of lava flow into the ocean. The entry points of the lava vary, and the safety zone will vary accordingly. The safety zone is needed to protect persons and vessels from the potential hazards associated with molten lava entering the ocean resulting in explosions of large chunks of hot rock and debris upon impact, collapses of the sea cliff into the ocean, hot lava arching out and falling into the ocean, and the release of toxic gases. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Honolulu or his designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 8 AM (HST) on September 28, 2017. For purposes of

enforcement, actual notice will be used from 8 AM (HST) on March 28, 2017, 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 <http://www.regulations.gov>, type USCG- USCG-2017-0172 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 temporary rule, call or email Lieutenant Commander Nicolas Jarboe, Waterways Management Division, U.S. Coast Guard; telephone 808-541-4359, email D14-SMB-SecHono-MarineEventPermits@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
TFR	Temporary Federal Regulation
U.S.C.	United States Code

II. Background Information and Regulatory History

Lava has been entering the ocean at Kamokuna on Kīlauea Volcano’s south coast since July of 2016. As with all ocean entries during this long-lived Kīlauea eruption, hazards to people nearby on land and sea include: a plume of corrosive seawater laden with hydrochloric acid and fine volcanic particles that can irritate the skin, eyes, and lungs; explosions of debris and scalding water as hot rock interacts with the ocean; sudden collapse of lava deltas (new land formed as lava accumulates above sea level extending out from the base of the existing sea cliff); waves

associated with explosions, collapses; plumes of hot water. For more information, please see: <https://pubs.usgs.gov/fs/2000/fs152-00/>.

On New Year's Eve 2016, a large portion of the new lava delta collapsed into the ocean producing waves and explosions of debris. Following this collapse, portions of the adjacent sea cliff continued to collapse into the ocean producing localized ocean waves and showers of debris. As of late March 2017, a new delta has begun to form at the Kamokuna ocean entry. Additionally, cracks parallel to the sea cliff in the surrounding area persist, indicating further collapses with very little or no warning are possible.

Based on a review of nearly 30 years of delta collapse and ejecta distance observations in the Hawaii Volcano Observatory records, a radius of 300 meters was determined as a reasonable minimum high hazard zone around a point of ocean entry.

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 those procedures is "impractical, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard finds it impractical to issue an NPRM with respect to this rule because of the emergency situation of potential hazards associated with molten lava entering the ocean resulting in explosions of large chunks of hot rock and debris upon impact, collapses of the sea cliff into the ocean, hot lava arching out and falling into the ocean, and the release of toxic gases that poses a danger to vessel traffic and the public. Publishing an NPRM and delaying the effective date would be contrary to the safety zone's

intended objectives, including but not limited to protection of the public and mitigation of danger to nearby vessels from the hazards of flow entry into the ocean, enhancing public safety.

Publishing a NPRM and delaying the effective date would also be contrary to the public interest since the occasion would occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety of the public. The COTP Honolulu finds this temporary safety zone must be effective immediately to ensure the safety of the public during Kilauea's active lava flow entry into the Pacific Ocean on the southeast side of the Island of Hawaii, HI.

The Coast Guard is publishing an NPRM elsewhere in this issue of the Federal Register that proposes to establish a permanent safety zone for the navigable waters surrounding the entry of lava from Kilauea volcano into the Pacific Ocean on the southeast side of the Island of Hawaii, HI.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Honolulu has determined that potential hazards associated with Kilauea's active lava flow entry into the Pacific Ocean on the southeast side of the Island of Hawaii, HI is safety concern for anyone within 300 meters (984 feet) in all directions around the entry of lava flow. The purpose of this rule is to ensure safety of public, vessels, and the navigable waters covered by the safety zone.

IV. Discussion of Comments, Changes, and the Rule

This temporary final rule establishes a safety zone from 8 AM (HST) on March 28, 2017, through 8 AM (HST) on September 28, 2017. The entry point of the lava does change based on flow, however the safety zone will encompass all waters extending 300 meters (984 feet) in all directions around the entry point of lava flow into the ocean associated with the lava flow at the

Kamokuna lava delta. The safety zone is needed to protect persons and vessels from potential hazards associated with molten lava entering the ocean resulting in explosions of large chunks of hot rock and debris upon impact, hot lava arching out and falling into the ocean, and the release of toxic gases. No persons or vessels will be permitted to enter the safety zone without express authorization from the COTP Honolulu or his 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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will only impacts a small designated area on the southeast side of the Island of Hawaii, HI. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone and the rule allows vessels to seek permission to enter the safety 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 for reasons stated in section V. A. above.

Some owners or operators of vessels, which may be small entities, conduct tours in the vicinity of the safety zone where lava flow enters the ocean. Some of these owners or operators reportedly navigate closer than 300 meters from the lava entry into the ocean. This rule may affect their operations. The safety zone does not prohibit ocean tours; however the safety zone simply requires operators and vessel owners to navigate at a safe distance. It also allows vessels to seek permission of the COTP Honolulu to get closer.

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 contact 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. 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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 a temporary safety zone lasting 6 months that will prohibit persons and vessels from entry into the 300 meters (984 feet) safety zone extending in all directions around the entry of lava flow into the Pacific Ocean. This safety zone is 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.

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: 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.T14-0172 to read as follows:

§ 165.T14-0172 Safety Zone; Pacific Ocean, Kilauea Lava Flow Ocean Entry on Southeast Side of Island of Hawaii, HI.

(a) Location. The safety zone area is located within the COTP Zone (See 33 CFR 3.70-10) and encompasses one primary area from the surface of the water to the ocean floor at the Kilauea active lava flow entry into the Pacific Ocean on the southeast side of the Island of Hawaii, HI. The entry point of the lava does change based on flow, however the safety zone will encompass all waters extending 300 meters (984 feet) in all directions around the entry point of lava flow into the ocean associated with the lava flow at the Kamokuna lava delta.

(b) Effective period. This rule is effective from 8 AM (HST) on March 07, 2017, through 8 AM (HST) on September 22, 2017.

(c) Regulations. The general regulations governing safety zones contained in §165.23 apply to the safety zone created by this temporary final rule.

(1) All persons and vessels are required to comply with the general regulations governing safety zones found in this part.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the COTP Honolulu or his designated representative.

(3) Persons or vessels desiring to transit the safety zone identified in paragraph (a) of this section may contact the COTP of Honolulu through his designated representatives at the Command Center via telephone: (808) 842-2600 and (808) 842-2601; fax: (808) 842-2642; or on VHF channel 16 (156.8 Mhz) to request permission to transit the safety zone. If permission is granted, all persons and vessels must comply with the instructions of the COTP Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the safety zone.

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

(d) Notice of enforcement. The COTP Honolulu will provide notice of enforcement of the safety zone described in this section by verbal radio broadcasts and written notice to mariners.

(e) Definitions. As used in this section, “designated representative” means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the safety zone described in paragraph (a) of this section.

Dated: March 28, 2017.

M.C. Long,
Captain, U.S. Coast Guard,
Captain of the Port Honolulu.

[FR Doc. 2017-06473 Filed: 3/31/2017 8:45 am; Publication Date: 4/3/2017]