



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0167]**

**RIN 1625-AA00**

**Safety Zone; Pacific Ocean, Hilo Harbor, HI – Lightering Operations**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the navigable waters of Hilo Harbor, Hawaii. The safety zone is needed to protect personnel, vessels and the marine environment from potential hazards associated with ongoing lightering operations of the vessel MIDWAY ISLAND grounded along the northwest side of Hilo Harbor, particularly through helicopter to shore hoisting ops and swimmers in the water. The USCG is overseeing contractor lightering ops to mitigate the pollution threat from the vessel in this area. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Honolulu.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 8 p.m. on April 10, 2020. For the purposes of enforcement, actual notice will be used from March 12, 2020 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- USCG-2020-0167 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, call or email Chief Jason R. Olney, Waterways Management Division, U.S. Coast Guard; telephone 808-522-8265, email Jason.R.Olney@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

**II. Background Information and Regulatory History**

On February 6, 2020, a temporary final rule [USCG-2020-0113; 85 FR 8175 (Feb. 13, 2020)] was issued to establish a safety zone around the grounded vessel MIDWAY ISLAND. That rule expired at 8 p.m. on February 12, 2020. An additional temporary final rule [USCG-2020-0121; 85 FR 10981 (Feb. 26, 2020)] was issued on February 12, 2020 to maintain the safety zone around the grounded vessel. That rule expired at 8 p.m. on March 12, 2020. The Coast Guard is issuing this rule to establish the temporary safety zone so the lightering operations can continue.

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 immediate action is needed to respond to the potential safety hazards associated with this lightering operation, and therefore publishing an NPRM is impracticable and contrary to public interest.

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 would be contrary to the rule’s objectives of responding to potential safety hazards associated with the lightering operations and protecting personnel, vessels, and the marine environment within the navigable waters of the safety zone.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. On February 3, 2020, the Coast Guard was informed of a vessel that ran aground along the northwest side of Hilo Harbor, Hawaii. The Coast Guard COTP Sector Honolulu has determined that potential hazards associated with the lightering operations constitute a safety concern for anyone within the designated safety zone. This rule is necessary to

protect personnel, vessels, and the marine environment within the navigable waters of the safety zone during ongoing salvage operations.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from March 12, 2020 through 8 p.m. April 10, 2020 or until the lightering operations are complete, whichever is earlier. If the safety zone is terminated prior to 8 p.m. on April 10, 2020, the Coast Guard will provide notice via a broadcast notice to mariners.

The temporary safety zone encompasses all waters extending 100 yards in all directions around the location of ongoing lightering operations near position: 19° 44'41.17" N; 155° 05' 24.23" W. This zone extends from the surface of the water to the ocean floor. The zone is intended to protect personnel, vessels, and the marine environment in these navigable waters from potential hazards associated with the lightering operations of a vessel aground in this area. No vessel or person will be permitted to enter the safety zone absent the express authorization of the COTP 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 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 anticipated short duration of the lightering operations and the need to protect personnel, vessels and the marine environment in these navigable waters from potential hazards associated with the lightering operations of the vessel aground in this area. Moreover, the Coast Guard will issue a broadcast notice to mariners on marine channel 16 about 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.

While some owners or operators of vessels intending to transit the safety zones 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 a safety zone lasting 29 days that will prohibit entry into the area during lightering efforts. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. 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.T14-0167 to read as follows:

**§ 165.T14-0167 Safety Zone; Pacific Ocean, Hilo Harbor, HI – Lightering Operations.**

(a) Location. The safety zone is located within the Captain of the Port (COTP) Honolulu Zone (See 33 CFR 3.70-10) and will encompass all navigable waters extending 100 yards in all directions from position: 19° 44'41.17" N; 155° 05' 24.23" W. This zone extends from the surface of the water to the ocean floor.

(b) Regulations. The general regulations governing safety zones contained in § 165.23 apply to the safety zone described in paragraph (a) of this section.

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

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

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

(c) Notice of enforcement. The COTP Honolulu will cause Notice of the Enforcement of these safety zones described in this section to be made by Broadcast to the maritime community via marine safety broadcast notice to mariners on VHF channel 16 (156.8 MHz).

(d) 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.

(e) Enforcement period. This section will be enforced from March 12, 2020, through 8 p.m. on April 10, 2020. If the safety zone is terminated prior to 8 p.m. on April 10, 2020, the Coast Guard will provide notice via a broadcast notice to mariners.

Dated: March 12, 2020.

A.B. Avanni,  
Captain, U.S. Coast Guard,  
Captain of the Port Honolulu.

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