



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2020-0610]

RIN 1625-AA00

Safety Zone; J5D Optic Line Replacement, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable U.S. waters in the Detroit River, Detroit, MI. This safety zone is necessary to protect vessels from potential hazards associated with the replacement of the J5D optic line. Entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Detroit.

DATES: This temporary final rule is effective from 8 a.m. on November 24, 2020, through 7 p.m. December 2, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2020-0610 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 e-mail Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313-568-9564, e-mail Tracy.M.Girard@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

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 doing so would be impracticable. The Coast Guard did not receive the final details of this line replacement in time to publish an NPRM. As such, it is impracticable to publish an NPRM because doing so would prevent the Coast Guard from enforcing the temporary safety zone during the optic line replacement work, exposing the public to the dangers associated with this work. We are issuing this rule under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register for the same reason noted above.

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 Detroit has determined that potential hazards associated with J5D Optic Line Replacement will be a safety concern to anyone in the vicinity of the replacement location. This rule is needed to protect personnel, vessels,

and the marine environment in the navigable waters within the safety zone while the line replacement is occurring.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from November 24, 2020 at 8 a.m. through 7 p.m. on December 2, 2020. Each safety zone will be enforced for a four hour period on November 24, 2020 and on December 1, 2020. In the case of inclement weather on those dates, this safety zone will be enforced for a four hour period the day after both stated dates. Each safety zone will encompass all U.S. navigable waters of the Detroit River within 300 yards up-bound and 300 yards down-bound from the shore at position 42°17.618'N, 083°05.888'W (NAD 83) extending seaward to the international boundary line. No vessel or person will be permitted to enter each safety zone without obtaining permission from the COTP Detroit 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 characteristics of each safety

zone. Each safety zone created by this rule will impact a small designated area of the Detroit River and is designed to minimize the impact on its navigable waters. This rule is not anticipated to exceed four hours per enforced period. Vessel traffic will not be able to transit around the safety zone during the enforced period. Therefore, the Coast Guard will issue a Broadcast Notice to Mariners (BNM) via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit 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 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.

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 four hours on two separate dates that will prohibit entry into the designated area. It is categorically excluded from further review under paragraph L60(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 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.T09-0610 to read as follows:

§ 165.T09-0610 Safety Zone; J5D Optic Line Replacement, Detroit River, Detroit, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of the Detroit River within 300 yards up-bound and 300 yards down-bound from the shore at position 42°17.618'N, 083°05.888'W (NAD 83) extending seaward to the international boundary line.

(b) *Enforcement period.* This section establishes a safety zone from 8.a.m. November 24, 2020 through 7 p.m. on December 2, 2020. Each safety zone will be enforced for a four hour period on November 24, 2020 and on December 1, 2020. In the case of inclement weather on those dates, each safety zone will be enforced for a four hour period the day after both stated dates.

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone must

contact the COTP Detroit or an on-scene representative to obtain permission to do so.

The COTP Detroit or an on-scene representative may be contacted via VHF Channel 16.

Vessel operators given permission to enter or operate in the safety zone must comply

with all directions given to them by the COTP Detroit or an on-scene representative.

Dated: November 5, 2020.

Brad W. Kelly,
Captain, U.S. Coast Guard,
Captain of the Port, Detroit.

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