



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0278]

RIN 1625-AA00

Safety Zone; Submarine Power Cables Stone Laying Project, Straits of Mackinac,

MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500-yard radius of Tug Nancy Anne, Tug Champion, Tug General, Tug WM. Boyd, Tug Shirley Ann, crew boat Timmy V., barges Koko II, Koko III, Koko IV, MM 141, MM 142, D Barge 2002, D Barge 2006, and D Barge 2007. The safety zone is needed to protect the vessels while laying stones to protect exposed sections of 138kV Submarine Power Cables in the Straits of Mackinac, MI. Entry of vessels into this zone is prohibited unless specifically authorized by the Captain of the Port Northern Great Lakes.

DATES: This rule is effective from May 1, 2024, 12 a.m. through October 1, 2024, 11:59 p.m. local time. For the purposes of enforcement, actual notice will be used from May 1, 2024 until May 4, 2024. Comments and related material must be received by the Coast Guard on or before June 18, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0278 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Rebecca Simpson, Sector Northern Great Lakes Waterways Management Division, U.S. Coast Guard; telephone 906-635-3223, email ssmprevention@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 it is impracticable.

It is impracticable to publish an NPRM because this safety zone must be established by May 1, 2024, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

For the same reasons discussed in the preceding paragraph, a 30 day delay of the effective date would be contrary to public interest because action is needed to respond to the potential safety hazards associated with the stone laying project over submarine

power cables and the potential hazard from other vessels transiting the Straits of Mackinac at the same time this project is being conducted.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Northern Great Lakes (COTP) has determined that potential hazards associated with the stone laying project over submarine power cables starting May 1, 2024, will be a safety concern for anyone within a 500-yard radius of the industrial construction equipment, including Tug Nancy Anne, Tug Champion, Tug General, Tug WM. Boyd, Tug Shirley Ann, crew boat Timmy V., barges Koko II, Koko III, Koko IV, MM 141, MM 142, D Barge 2002, D Barge 2006, and D Barge 2007. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the stone laying operation is being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from 12 a.m. on May 1, 2024 until 11:59 p.m. on October 1, 2024. The safety zone will cover all navigable waters within the Mackinac Regulated Navigation Area within 500 yards of vessels and machinery being used to lay stone over exposed 138kV submarine power cables. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the stone is being laid. 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 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. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration and location of the safety zone. 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 will issue a Local Notice to Mariners about the safety 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 (Pub. L. 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 to cover all navigable waters within the Mackinac Regulated Navigation Area within 500 yards of vessels and machinery being used to lay stone over 138kV submarine power cables. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T09-0278 to read as follows:

§ 165.T09-0278 Safety Zone; Tugs Nancy Anne, Champion, General, WM. Boyd, Shirley Ann, crew boat Timmy V., and barges Koko II, Koko III, Koko IV, MM 141, MM 142, D Barge 2002, D Barge 2006, and D Barge 2007 operating in the Straits of Mackinac, MI

(a) *Location.* The following area is a safety zone: All navigable waters within 500 yards of the Tug Nancy Anne, Tug Champion, Tug General, Tug WM. Boyd, Tug Shirley Ann, crew boat Timmy V., barges Koko II, Koko III, Koko IV, MM 141, MM 142, D Barge 2002, D Barge 2006, and D Barge 2007 while laying stone over the Submarine Power cables within the Straits of Mackinac RNA.

(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 Northern Great Lakes (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative

by VHF Channel 16 or telephone at (906) 635-3233. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

Dated: April 24, 2024.

J. R. Bendle,

Captain, U.S. Coast Guard,
Captain of the Port Sector Northern Great lakes

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