

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2022–0616]

RIN 1625–AA00

#### Safety Zone; Fairport Harbor, Fairport, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters of Fairport Harbor, OH. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from hazards created by shoaling in the area.

**DATES:** This rule is effective without actual notice July 22, 2022 through November 15, 2022. For enforcement purposes, actual notice will be used from July 15, 2022, until July 22, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2022–0616 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 on this rule, call or email LT Jared Stevens, Waterways Management Division, U.S. Coast Guard; telephone 216–937–0124, email [D09-SMB-MSUCleveland-WWM@uscg.mil](mailto:D09-SMB-MSUCleveland-WWM@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 the Coast Guard has learned that significant shoaling has developed in the vicinity of the navigational channel, and the nature and location of the shoaling presents an imminent hazard to navigation. The safety zone must be established as soon as possible for the safety of all personnel, vessels, and the marine environment; thus, it is impracticable to publish an NPRM.

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 because immediate action is needed in order to mitigate the safety hazards associated with the shoaling in Fairport Harbor.

##### 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), 46 U.S.C. 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2. The Captain of the Port (COTP) Buffalo has determined that the hazards associated with shoaling in Fairport Harbor, OH are a safety concern for all marine traffic. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone until dredging can be completed in accordance with the U.S. Army Corps of Engineers’ approved project depth for the federally maintained sections of the waterway.

##### IV. Discussion of the Rule

This rule establishes a safety zone for all federally maintained waters of Fairport Harbor, OH. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the federally maintained channel is dredged in accordance with the approved U.S. Army Corps of Engineers federal project depths. All vessels are prohibited from transiting the safety zone with an under keel clearance of less than one (1) foot and six (6) inches. Every vessel’s under keel clearance shall be verified by the master prior to entry and departure from Fairport Harbor, OH. Further, draft readings shall be documented and retained on board. Additionally, vessels greater than 100 Gross Registered Tons shall not meet or pass another vessel while navigating within the safety zone.

The most recent U.S. Army Corps of Engineers project condition surveys and

hydrological surveys can be found on their website: <https://www.lrb.usace.army.mil/Library/Maps-and-Charts/>.

##### 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 Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the safety zone, and this regulatory action allows vessel traffic to transit within and around the safety zone under the conditions outlined in this rulemaking.

###### 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 lasting approximately 120 days, or until cancelled. This rule requires all vessels to maintain a minimum of one (1) foot and six (6) inches under keel clearance while transiting the safety zone. Every vessel's under keel clearance shall be verified by the master prior to entry and departure from Fairport Harbor, OH. Further, draft readings shall be documented and retained on board. Additionally, vessels greater than 100 Gross Registered Tons shall not meet or pass another vessel while navigating within the safety zone. 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 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

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05, 6.04-1, 6.04-6, and 160.5; Department

of Homeland Security Delegation No. 00170.1, Revision No. 01.2

■ 2. Add § 165.T09-0616 to read as follows:

#### § 165.T09-0616 Fairport Harbor Shoaling, Fairport, OH.

(a) *Location.* The following area is a safety zone: all federally maintained waters within Fairport Harbor, OH.

(b) *Definitions.* *Official Patrol Vessel* 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 COTP Buffalo in the enforcement of the regulations in this section.

(c) *Regulations.* (1) All vessels are required to maintain a minimum of one (1) foot and six (6) inches under keel clearance while transiting the safety zone.

(2) The under keel clearance shall be verified by the vessel's master prior to entry and departure from Fairport Harbor, OH. Draft readings and under keel clearance shall be documented and retained on board, and be readily available for verification upon request by the U.S. Coast Guard.

(3) Vessels greater than 100 Gross Registered Tons shall not meet nor pass another vessel while navigating within the safety zone.

(4) The Coast Guard may patrol the safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM."

(5) No vessel shall anchor, block, loiter, or impede the through transit of vessels in the regulated area during the effective dates and times, unless cleared by or through an official patrol vessel. The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any vessel may anchor outside the regulated areas specified in this chapter, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special regulations upon satisfactory completion of dredging operations in

consultation with U.S. Army Corps of Engineers and the COTP Buffalo.

(d) *Enforcement period.* This safety zone will be enforced from July 15, 2022, until November 15, 2022.

Dated: July 15, 2022.

**M.I. Kuperman,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 202

[Docket No. 2022–4]

#### Liberalizing the Deposit Requirements for Registering a Single Issue of a Serial Publication

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Copyright Office is amending the rules for registering a single issue of a serial publication, such as an individual issue of a magazine or journal. Under the current regulations, two copies of the best edition are generally needed to register this type of work, and must be in a physical format if the issue was published in that form. The amended rule will liberalize the deposit requirements by letting copyright owners submit one copy of such works instead of two. It also gives copyright owners the option of uploading a digital copy through the electronic registration system, even if the issue was published in a physical format. Alternatively, copyright owners may mail one copy to the Office in a physical format, although mailing a physical copy will delay the examination of the claim and result in a later effective date of registration.

**DATES:** Effective August 22, 2022.

**FOR FURTHER INFORMATION CONTACT:** Suzanne V. Wilson, General Counsel and Associate Register of Copyrights, by email at [svwilson@copyright.gov](mailto:svwilson@copyright.gov), or Robert J. Kasunic, Associate Register for Copyrights and Director of Registration Policy and Practice, by email at [rkas@copyright.gov](mailto:rkas@copyright.gov). Each person may be reached by telephone at 202–707–8050.

#### SUPPLEMENTARY INFORMATION:

##### Background

When Congress enacted the Copyright Act of 1976, it authorized the Register of Copyrights to issue regulations specifying administrative classes of

works for the purpose of seeking a registration.<sup>1</sup> Pursuant to this authority, the Register established an administrative class for “serials,” known as Class SE.<sup>2</sup> For purposes of registration, a “serial” is defined as “a work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely.”<sup>3</sup> Examples of works that may qualify as a serial include issues of periodicals, newspapers, journals, and annuals.<sup>4</sup>

Section 408 of the Copyright Act states that an application for registration must be accompanied by “two complete copies . . . of the best edition” if the work has been published in the United States.<sup>5</sup> The “best edition” is defined as “the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.”<sup>6</sup> Section 407 of the Copyright Act separately states that if a work has been published in this country, the copyright owner or the owner of the exclusive right of publication is required to deposit two complete copies of the best edition of that work with the Copyright Office within three months after publication.<sup>7</sup> This is known as the “mandatory deposit requirement.”

Copies that are submitted to the Copyright Office to satisfy the section 407 mandatory deposit requirement are intended “for the use or disposition of the Library of Congress.”<sup>8</sup> Likewise, copies of published works that are submitted for registration under section 408 are made “available to the Library of Congress for its collections.”<sup>9</sup> To avoid duplication, section 408 specifies that copies deposited under section 407 “may be used to satisfy the deposit provisions” of section 408 “if they are accompanied by the prescribed application and fee.”<sup>10</sup>

Both sections 407 and 408 give the Register authority to issue regulations concerning the nature of the copies that must be deposited, and the ability to create exceptions to the deposit requirements set forth in the statute.

Section 408 gives the Register authority to “require or permit, for particular classes [of works], . . . the deposit of only one copy . . . where two would normally be required” for copyright registration.<sup>11</sup> Similarly, section 407 gives the Register authority to issue regulations that “require [the] deposit of only one copy” for the purpose of mandatory deposit.<sup>12</sup>

The legislative history confirms that the Register may adjust the deposit requirements to reduce burdens on copyright owners and to improve efficiencies within the Copyright Office. In discussing the Register’s authority under section 407, Congress made clear that the mandatory deposit requirement should be “as flexible as possible, so that there will be no obligation to make deposits where it serves no purpose, so that only one copy . . . may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases.”<sup>13</sup> Similarly, the legislative history for section 408 states that the “[d]eposit of one copy . . . rather than two would probably be justifiable . . . in any case where the Library of Congress has no need for the deposit.”<sup>14</sup>

In 2018, the Register exercised this authority to modify the mandatory deposit requirement for serials.<sup>15</sup> If a serial is published in the United States in a physical form, or in both a physical and electronic format, publishers are required to provide the Library with two complimentary subscriptions to that serial, unless they have been informed by the Office that the serial is not needed for the Library’s collections.<sup>16</sup> By contrast, if a serial is published solely in electronic form, publishers have no affirmative obligation to provide a subscription, unless the Office issues a formal demand.<sup>17</sup>

Today, the Register exercises her authority to liberalize another deposit requirement related to serials, specifically for the registration of a single issue of a serial publication. First, the new rule lets copyright owners deposit one copy of the issue instead of two.<sup>18</sup> Second, it provides flexibility in

<sup>1</sup> 17 U.S.C. 408(c).

<sup>2</sup> 37 CFR 202.3(b)(1)(v).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 17 U.S.C. 408(b)(2). If the work was first published in a foreign country but has not been published in the United States, the applicant must submit one complete copy of the foreign edition. *Id.* at 408(b)(3).

<sup>6</sup> *Id.* at 101.

<sup>7</sup> *Id.* at 407(a)(1), (b).

<sup>8</sup> *Id.* at 407(b).

<sup>9</sup> *Id.* at 704(b).

<sup>10</sup> *Id.* at 408(b).

<sup>11</sup> *Id.* at 408(c)(1).

<sup>12</sup> *Id.* at 407(c).

<sup>13</sup> H.R. Rep. No. 94–1476, at 151 (1976).

<sup>14</sup> *Id.* at 154.

<sup>15</sup> 83 FR 61546 (Nov. 30, 2018).

<sup>16</sup> 37 CFR 202.19(d)(2)(xi).

<sup>17</sup> *Id.* at 202.19(c)(5).

<sup>18</sup> The Office recently updated the regulations governing the deposit requirement for the group registration option for serial issues. 37 CFR 202.4(d)(3); 84 FR 60918 (Nov. 12, 2019); 83 FR 61546 (Nov. 30, 2018). Today’s final rule only applies to claims involving a single issue of a serial