

Dated: July 8, 2005.

Marcus Redford,

Bridge Administrator.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-05-027]

RIN 1625-AA87

Security Zone; Cleveland Harbor, Cleveland, OH, Change of Location

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; amendment.

SUMMARY: On July 1, 2005, the Coast Guard published a temporary final rule establishing a security zone in Cleveland's inner harbor for the visit of the HMCS Toronto. On July 8, 2005, the Coast Guard learned the HMCS Toronto would be mooring at a different location. This rule changes the location of the temporary security zone and clarifies its duration. Entry into this security zone is prohibited without permission of the Captain of the Port Cleveland.

DATES: This rule is effective from 12:01 a.m. July 15, 2005, until 11:59 p.m., July 17, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09-05-027] and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LT Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937-0128.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The new location of where the HMCS Toronto would dock was not known in sufficient time to allow for the publication of an NPRM followed by publication of an effective rule before the event. And delaying this rule would be contrary to

the public interest of ensuring the safety of dignitaries and vessels during this event, and immediate action is necessary to prevent possible loss of life or property.

For these same reasons, 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**.

Background and Purpose

This security zone is necessary to ensure the safety of the vessel and dignitaries visiting Cleveland from any potential hazards or threats associated with foreign warships and dignitary visits.

The combination of large numbers of inexperienced recreational boaters, congested waterways, and crossing commercially transited waterways could result in an unnecessary security risk to any visiting dignitaries.

Establishing security zones gives the Coast Guard and Law Enforcement agencies an opportunity to secure an area before a dignitary arrives.

Discussion of the Amendment to the Temporary Final Rule

The Coast Guard is establishing a security zone at Cleveland's inner harbor in Cleveland, OH. This amendment to the rule changes the location of the security zone to include all waters within a 300 radius of Cleveland Port Authority (CPA) Dock 32 and all waters contained in the North Coast Harbor. We have also changed the specific start and end times to clarify the duration of this temporary security zone.

Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative. The designated on-scene representative will be the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may be contacted via VHF Channel 16. The Coast Guard will notify the public in advance by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from marine Safety Office Cleveland, by facsimile.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under

the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the size and location of the security zone within the water. The security zone will hinder commercial vessels, as they will not be able to transit within the breakwater during the period this zone is in effect. Recreational vessels will not be allowed to transit through the designated security zone during the specified times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant impact on a substantial number of small entities. 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 would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of the activated security zone.

This security zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect while the HMCS Toronto is in port. Before the activation of the security zone, the Coast Guard notify mariners through the Ninth District Coast Guard Local Notice to Mariners, Marine Information Broadcasts and when requested by facsimile.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects and participate

in the rulemaking process. 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 Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, 1055 East 9th Street, Cleveland, OH 44114. 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.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an

environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. We invite your comments on how this proposed rule might impact tribal government, even if that impact may not constitute a “tribal implication” under that Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast

Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

While not required, a preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES** for your review.

■ For the reasons discussed in the preamble, and under authority in 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, the Coast Guard amends the temporary final rule published July 1, 2005 (69 FR 38015) entitled, “Security Zone; Cleveland Harbor, Cleveland, Ohio”.

§ 165.T09–027 [Amended]

■ In rule FR Doc. 05–13072 published on July 1, 2005 (69 FR 38015) make the following amendments to paragraphs (a) and (b) of § 165.T09–027. On page 38016, in the third column, remove the last 2 lines, and on page 38017, in the first column, removed the first 12 lines, and add, in their place, the following text:

(a) *Location*. The following area is a security zone: All waters within a 300 yard radius of Cleveland port Authority Dock 32 (41°30′37″N, 081°41′49″W) and all waters contained in the North Coast Harbor. All coordinates reference North American 83 Datum (NAD 83).

(b) *Effective period*. This section is effective from 12:01 a.m. July 15, 2005, until 11:59 p.m., July 17, 2005.

Dated: July 8, 2005.

W. Watson,

Lieutenant, U.S. Coast Guard, Acting Captain of the Port of Cleveland.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7937–3]

RIN 2060–AN19

Control of Emissions of Air Pollution From Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).