



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-1092]

RIN 1625-AA00

Safety Zone within the Lower Portion of Anchorage #9, Mantua Creek Anchorage; Paulsboro, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will be establishing a temporary safety zone around the southern one-third of Anchorage #9 (Mantua Creek Anchorage) due to dredging operations. The Dredge Florida will be working along with several support barges and tugs to install approximately 8,000 feet of submerged pipeline and approximately 3,000 feet of floating pipeline crossing through this portion of the anchorage. This regulation is necessary to provide for the safety of life on the navigable waters of the Mantua Creek Anchorage. This closure is intended to restrict vessel anchoring to protect mariners from the hazards associated with an ongoing dredging operation.

DATES: This rule is effective with actual notice from December 20, 2012 until [INSERT DATE OF PUBLICATION IN THE FEDERAL

REGISTER]. This rule is effective in the Federal Register from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until January 31, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-1092]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail If you have questions on this temporary rule, call or e-mail Lieutenant Veronica Smith, U.S. Coast Guard, Sector Delaware Bay, Acting Chief of Waterways Management Division, Coast Guard; telephone 215-271-4851, e-mail veronica.l.smith@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security

A. Regulatory History and Information

The Coast Guard is issuing this final 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 final details for this dredging operation were not provided until it was too late to solicit public comment. As such, it is impracticable to provide a full comment period due to lack of time. The dredging will begin on December 20th, 2012 and will continue until January 31, 2013 unless completed earlier.

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 for the reasons cited above. Delaying this regulation's effective date would be impracticable because immediate action is needed to provide for the safety of life and property from the hazards associated with the dredging operation.

B. Basis and Purpose

The Great Lakes Dredging Company has been working with the Army Corps of Engineers on the Delaware River channel widening project. A portion of this project requires the use of submerged and floating pipelines crossing the lower portion of the Mantua Creek Anchorage. Due to the presence of the submerged pipeline, it is dangerous for vessels to anchor in the southern one-third of the anchorage. A safety zone is necessary because there will be an ongoing dredging operation to deepen the Delaware River channel in the Mifflin and Billingsport Ranges from December 20, 2012 until January 31, 2013. The Captain of the Port believes a safety zone is needed to ensure the safety of life and property of all mariners and vessels transiting the local area.

C. Discussion of the Final Rule

The Coast Guard Captain of the Port Delaware Bay is temporarily establishing a safety zone closing the southern one-third of the Mantua Creek Anchorage from on December 20, 2012

until January 31, 2013. This rule will be enforced until all dredging operations are completed, unless enforcement of the zones is cancelled earlier by the Captain of the Port. The Captain of the Port will reopen this portion of the anchorage once all submerged pipeline has been recovered and dredging operations are completed. At such time, notice that the temporary closure of the anchorage is no longer in effect will be broadcast to mariners.

The boundary line for the temporary safety zone includes the southern one-third portion of Mantua Creek Anchorage, beginning at position 39° 51.573 N - 075° 13.557 W and extending to the southern boundary according to NOAA chart 12312. Vessels will not be permitted to anchor in this portion of Mantua Creek Anchorage unless they receive authorization from the Captain of the Port Delaware Bay or her representative. Such requests must be made 24 hours prior to the intended use of the Mantua Creek Anchorage. Vessels may contact the Captain of the Port Delaware Bay or her representative in order to obtain authorization by contacting Coast Guard Sector Delaware Bay at: (215) 271-4940. After evaluating the current conditions and status of dredging operation, the Captain of the Port Delaware Bay or her representative will notify the requesting vessel whether they are authorized to anchor in the safety zone within Mantua Creek Anchorage, and will provide any other directions for their

request.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based numerous statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) the Coast Guard will make extensive notification of the closure to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to anchor in the safety zone with the permission of the Captain of the Port on a case-by-case basis; and (iii) this rule will be enforced for only the duration of dredging operations.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-

612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of the vessels intending to anchor in the safety zone within Mantua Creek Anchorage from December 20, 2012 until January 31, 2012 or until all dredging operations are completed, unless cancelled earlier by the Captain of the Port.

This closure will not have a significant economic impact on a substantial number of small entities for the following reason: vessels will be allowed utilize the upper two-thirds of the Mantua Creek Anchorage, and nearby anchorages with permission of the Coast Guard Captain of the Port Delaware Bay or her representative. Sector Delaware Bay will issue maritime advisories widely accessible to users of the Anchorage informing them of the safety zone.

3. Assistance for Small Entities

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, above.

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.

4. 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).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INTFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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.

8. Taking of Private Property

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

9. 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.

10. Protection of Children

We have 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessels from utilizing the southern one-third of Mantua Creek Anchorage in order to protect the safety of life and property on the waters while dredging operations are conducted. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-1092, to read as follows:

§ 165.T05-1092 Safety Zone Within the Lower Portion of Anchorage #9, Mantua Creek Anchorage; Paulsboro, NJ.

Location: The southern one-third of the Anchorage #9 (Mantua Creek Anchorage), below position 39° 51.573 N - 075° 13.557 W.

(a) Enforcement period: This rule will be enforced from December 20, 2012 until January 31, 2013, unless cancelled earlier by the Captain of the Port.

(b) Regulations: All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All persons and vessels utilizing the southern one-

third portion of the anchorage must be authorized by the Captain of the Port or her representative.

(2) All persons or vessels wishing to anchor within the safety zone must request authorization to do so from the Captain of the Port or her representative 24 hours prior to the intended time of transit.

(3) Vessels granted permission to anchor must do so in accordance with the directions provided by the Captain of the Port or her representative to the vessel.

(4) To seek permission to anchor in the safety zone, the Captain of the Port or her representative can be contacted via Sector Delaware Bay Command Center (215) 271-4940.

(5) This section applies to all vessels wishing to anchor in the safety zone within Mantua Creek Anchorage except vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation, and
- (iii) Emergency response vessels.

(6) No person may enter a safety zone unless authorized by the COTP or the District Commander;

(7) No person may bring or cause to be brought into a safety zone any vehicle, vessel, or object unless authorized by the COTP or the District Commander;

(8) No person may remain in a safety zone or allow any

vehicle, vessel, or object to remain in a safety zone unless authorized by the COTP or the District Commander; and

(9) Each person in a safety zone who has notice of a lawful order or direction shall obey the order or direction of the COTP or District Commander issued to carry out the purposes of this subpart.

(c) Definitions.

(1) The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(2) [Reserved]

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the Safety Zone by Federal, State, and local agencies.

Dated: December 20, 2012

T.C. Wiemers

Captain, U.S. Coast Guard

Alternate Captain of the Port Delaware Bay

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