



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2012-1045

RIN 1625AA00

Safety Zone; Military Munitions Recovery, Raritan River,  
Raritan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish a permanent safety zone within the waters of the Raritan River upstream of the Perth Amboy Railroad Bridge. This proposed safety zone is necessary to provide for the protection of the maritime public and safety of navigation during removal of underwater explosive hazards in the Raritan River. This action is intended to protect the public from the dangers posed by underwater explosives by restricting unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of the Raritan River while military munitions are rendered safe, detonated, and/or removed from the area. Entry into this zone (as well as a broad array of other actions) would be prohibited within the safety zone unless authorized by the

Captain of the Port New York or the designated on-scene representative.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2012-1045 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Hannah Eko, U. S. Coast Guard, Sector New York, Waterways Management Division, telephone (718) 354-4114, e-mail [Hannah.O.Eko@uscg.mil](mailto:Hannah.O.Eko@uscg.mil) or BMC Craig Lapeijko, Coast Guard First District Waterways Management Branch, telephone (617) 223-8381, e-mail [craig.d.lapeijko@uscg.mil](mailto:craig.d.lapeijko@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
USACE	United States Army Corps of Engineers

#### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this

document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2012-1045] in the "SEARCH" box and click "SEARCH". Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2012-1045) 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.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

## 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before **[INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**., using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine

that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1226, 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., which collectively authorize the Coast Guard to establish safety zones.

The U.S. Army Corps of Engineers (USACE) has been investigating the former Raritan Arsenal for over 20 years. The former Raritan Arsenal was approximately 3,200 acres and enclosed by Woodbridge Avenue and the Raritan River; between Mill Road and Clearview Avenue. USACE investigations in the past have located military munitions and hazardous and toxic waste in the former Raritan Arsenal region. Beginning in the fall of 2013, the USACE plans to conduct a remedial investigation within the Raritan River using advanced metal detection, removal, and detonation techniques. The USACE has established a website for this project at <http://www.nan.usace.army.mil/Missions/Environmental/EnvironmentalRemediation/FormerlyUsedDefenseSites/FormerRaritanArsenal.aspx>.

The USACE is conducting a remedial investigation within the Raritan River using advanced metal detection, removal, and detonation techniques. This investigation is tentatively scheduled to begin in the fall of 2013 and may extend into 2014 or beyond. The Coast Guard believes that a safety is needed to protect vessel traffic from the dangers of underwater explosives by restricting unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of the Raritan River while military munitions are rendered safe, detonated, or removed from the area.

#### C. Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone encompassing all navigable waters of the Raritan River upstream of the Perth Amboy Railroad Bridge to ensure the safety of mariners and vessels around the military munitions removal area.

This safety zone would be enforced while on-scene workers are retrieving military munitions that could pose a hazard to persons or vessels operating in the area. Each military munitions retrieval is expected to require the activation of the safety zone for a minimum of 60 minutes. Intended work hours (subject to change) are 6:00 a.m. through 6:00 p.m., Monday through Friday. The USACE will provide notice of the activation of the safety zone via vessels stationed at the eastern and western boundaries of the safety zone. These vessels will have

flashing yellow lights to alert mariners to their presence and that the safety zone is being enforced.

#### D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed 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 proposed rule would restrict access to a small portion of the Raritan River until military munitions are rendered safe and removed, the effect of this regulation would not be significant due to the following reasons: the safety zone would cover only a small portion of the navigable waters within the Raritan River during limited intervals of time. We expect portions of the safety zone to be activated for short period while the military munitions are being removed or detonated. In

addition, vessels may be authorized to enter the zone with permission of the COTP.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit, fish, dive, or anchor in a portion of the Raritan River upstream of the Perth Amboy Railroad Bridge during the time the safety zone is activated.

This proposed safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would only be activated for limited periods of time while the USACE is retrieving or detonating military munitions. Vessel traffic would be minimal because the location of the safety zone is in an area that does not experience high volumes of vessel traffic, with typical commercial traffic being very minimal. Upstream recreational vessel entities will be contacted concerning this safety zone. Before the activation of the zone, maritime advisories would be issued and widely available to users of the waterway in the

vicinity of the Raritan River.

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.

### 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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed 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 proposed 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 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.

#### 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would 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 proposed 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 from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. 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.

#### 12. Energy Effects

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

### 14. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves the establishment of a safety zone. This rule would be categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist is 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, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.170 to read as follows:

§ 165.170 Safety Zone; Military Munitions Recovery, Raritan River, Raritan, NJ.

(a) Location.

The following area is a safety zone: All navigable waters of the Raritan River upstream of the Perth Amboy Railroad Bridge, which spans the waterway at approximately 40°29'46.3"N, 74°16'51.5"W.

(b) Definitions. The following definitions apply to this section:

(1) "Designated representative" means any U.S. Army Corps of Engineers personnel, any commissioned, warrant, or petty officer of the U.S. Coast Guard, and any member of the Coast

Guard Auxiliary who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. As a designated representative, the U.S. Army Corps of Engineers official patrol vessel will communicate with vessels via VHF-FM radio or loudhailer.

(2) "Official patrol vessel" means any Coast Guard, Coast Guard Auxiliary, Army Corp of Engineers, state, or local law enforcement vessels assigned or approved by the COTP.

(c) Regulations.

(1) The general regulations in 33 CFR 165.23 apply.

(2) Entry, transit, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP.

(3) Upon being hailed by a U.S. Coast Guard vessel, U.S. Army Corps of Engineers vessel or a designated representative, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter, transit, dive, dredge, dump, fish, trawl, conduct salvage operations, remain within or anchor within the safety zone must contact the COTP or a designated representative via VHF channel 16 or by phone at (718) 354-4353 (Sector New York Command Center) to request permission.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative.

Dated: September 6, 2013

G. LOEBL,  
Captain, U.S. Coast Guard  
Captain of the Port New York

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Date: 09/19/2013]