



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0342]

RIN 1625-AA00

Safety Zone, Schuylkill River; Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of the Schuylkill River around the Point Breeze docks of Philadelphia Energy Solutions for a period of six months, from July 5, 2014 to January 5, 2015. The safety zone is necessary when a barge with a beam (width) up to 80 feet moors at the Philadelphia Energy Solutions Point Breeze docks Deloach pier, reducing the horizontal clearance of the channel by as much as 30 feet when a barge is moored at the facility. This rule will allow the Coast Guard to restrict all vessel traffic through the safety zone when a barge having a beam of 65 to 80 feet is scheduled to moor at the facility. The Coast Guard is seeking comments on the potential impact to vessel traffic on the Schuylkill River that may result from 30 feet of reduced horizontal channel clearance when a barge is moored at

the Point Breeze docks of Philadelphia Energy Solutions in the Schuylkill River. The Coast Guard intends to finalize this interim rule after considering, and incorporating to the extent appropriate, any comments from the public.

DATES: This rule is effective from July 5, 2014 to January 5, 2015. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number 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 First Class Petty Officer Tom Simkins, Sector Delaware Bay Waterways Management Division, U.S. Coast Guard; telephone (215) 271-4889, e-mail tom.j.simkins@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

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-2014-0342] 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-2014-

0342) 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 during the comment period, 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. Regulatory History and Information

The Coast Guard is issuing this 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. It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of waterway users operating in the vicinity of the safety zone. Mooring operations at the Deloach pier for barges with a beam (width) up to 80 feet are scheduled to begin in July 2014, and rapid establishment of the safety zone is needed to mitigate the potential safety hazards associated with these operations. A delay or cancellation of mooring operations in order to accommodate a full notice and comment period would delay necessary operations and result in increased costs and risks. This rule will enable Philadelphia Energy Solutions to reduce the costs and risks associated with multiple oil transfers. The Coast Guard believes it would be impracticable and contrary to the public interest to delay this regulation. 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 same reasons.

The Coast Guard will provide as much advance notice as possible prior to enforcement. Specific closure dates and times will be disseminated via a Safety Marine Information Broadcast during each closure and posted in the Local Notice to Mariners, if possible.

The Coast Guard is soliciting public comments on this temporary interim rule. Although this interim rule is effective on July 5, 2014, we will consider public comments when developing a final rule that will supersede this interim rule, and we may make changes in response to public comments on any part of this interim rule.

C. Basis and Purpose

The legal basis for this rule is: 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.

The purpose of this rulemaking is to ensure the safety of waterway users from hazards that may result from 30 feet of reduced horizontal channel clearance when a barge with a beam (width) up to 80 feet is moored at the Point Breeze docks of Philadelphia Energy Solutions in the Schuylkill River.

D. Discussion of Temporary Interim Rule

The Coast Guard is establishing a temporary safety zone in the waters of the Schuylkill River in Philadelphia, PA around the Deloach Pier, to be in effect while barges are moored which have a beam between 65 and 80 feet. Due to the width of these barges and the close proximity of the dock to the navigable channel, vessel traffic will be restricted from utilizing the full width of the channel while these barges are moored there. This temporary safety zone will be established for a period of six months, from July 5, 2014 to January 5, 2015. During times of enforcement, no person may enter the safety zone unless authorized by the Captain of the Port or her representative. Once this rule becomes effective, the Coast Guard will evaluate the continued need for the safety zone.

Philadelphia Energy Solutions utilizes two "Point Breeze docks," called the "Short pier" and the "Deloach pier," to conduct oil transfers on the Schuylkill River. The proximity of the navigable channel to the Short pier is as little as 65 feet on the south end. Likewise, the Deloach pier is only 50 feet from the boundaries of the navigable channel at its southernmost point. Due to close proximity to the navigable channel and the resulting beam restrictions on moored barges, Philadelphia Energy Solutions presently contracts a smaller barge to lighter product from the larger barge at anchorage in the Delaware River. The smaller barge then conducts transfers at the Point

Breeze docks. To reduce the risk of multiple oil transfers, Philadelphia Energy Solutions has requested to moor barges having a beam of up to 80 feet at the Point Breeze docks Deloach pier.

Philadelphia Energy Solutions requested permission to moor barges having a beam of up to 80 feet at their Point Breeze docks Deloach pier for the purpose of preventing dock congestion at Girard Point, thereby reducing the presence of barges at anchor awaiting berth in the Delaware River and reducing the risk of unnecessary oil transfers. The channel within the Schuylkill River is 300 feet wide at the location of the Point Breeze docks. A barge having a beam of 80 feet will overlap the navigable channel by approximately 30 feet while moored at the Deloach pier of the Point Breeze docks.

The Coast Guard has evaluated the potential impact to commercial navigation on the Schuylkill River and has discussed this action with maritime stakeholders on multiple occasions through the Mariner's Advisory Committee for the Bay and River Delaware. The Mariners Advisory Committee has received no stakeholder objections. Currently, only one berth regularly operates upriver of Passyunk Avenue Bridge, receiving barges which will not be restricted by the reduced horizontal channel clearance at Philadelphia Energy Solutions. Other terminals upriver of the bridge no longer receive vessel traffic.

No objections have been received by commercial stakeholders making use of the channel. Additionally, it is not anticipated that larger vessel traffic will be established upriver of Point Breeze due to existing bridge height restrictions. This rule is only in effect for six months and subject to review in the event larger vessel traffic wishes to trade upriver of Point Breeze in the future.

This rule is required in order to safely facilitate cargo operations and protect both life and property on the navigable waterways of the Schuylkill River in respect to the commercial/recreational vessel traffic, while mitigating congestion and anchorage use in nearby navigable waters. The Coast Guard is establishing a safety zone on the Schuylkill River at the Point Breeze docks of Philadelphia Energy Solutions from the Passyunk Avenue Bridge to latitude 39° 54' 50"N to facilitate the movement of barge traffic in the Schuylkill River and to prevent conflict of navigation between vessels transiting the Schuylkill River and barges mooring at the Deloach pier of Philadelphia Energy Solutions. The safety zone will provide notice for the safety of vessel traffic in the navigable channel. When a barge having a beam (width) of 65 to 80 feet is scheduled to moor at the Deloach pier, Philadelphia Energy Solutions will give the Coast Guard 24 hours advance notice. The Coast Guard will permit the wide barge to moor and will

broadcast the implementation of the safety zone for the duration of the time that the barge is moored at the Deloach pier.

Advance public notifications will be made to the local maritime community through the Broadcast Notice to Mariners and Local Notice to Mariners, if possible.

E. 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 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. This rule is not a significant regulatory action because it will not interfere with existing or potential activity on the Schuylkill River.

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 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.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The navigable channel is 300 feet wide, providing a remaining 270 feet of horizontal channel clearance for the passage of vessel traffic in the Schuylkill River. Additionally, the only commercial vessel traffic utilizing the waterway upriver of the Passyunk Avenue Bridge is an occasional barge. All anticipated vessel traffic will be able to pass safely around an 80 foot wide barge moored at the Deloach pier of the Point Breeze docks at Philadelphia Energy Solutions. Before the safety zone goes into effect, maritime advisories will be made widely available to users of the Schuylkill River navigable channel.

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 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 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 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 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 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 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 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 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 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 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 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 rule involves implementation of a safety zone when a barge having beam (width) of 65 to 80 feet is moored at the Deloach pier of the Point Breeze docks at Philadelphia Energy Solutions on the Schuylkill River. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary 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 temporary § 165.T05-0342, to read as follows:

§ 165.T05-0342 Safety Zone, Schuylkill River; Philadelphia, PA.

(a) Location. The following area is a safety zone: All waters of the Schuylkill River in Philadelphia, PA, inside a boundary described as originating from the Passyunk Avenue Bridge south to latitude 39° 54' 50"N.

(b) Enforcement period. (1) This regulation is enforced during times when a barge having a beam (width) of 65 to 80 feet is moored at the Deloach pier of the Point Breeze docks at Philadelphia Energy Solutions.

(2) Prior to commencing enforcement of this Safety Zone, the COTP or designated on-scene patrol personnel will notify the public whenever the regulations are being enforced, to include dates and times. The means of notification may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to

Mariners, Marine Safety Information Bulletins, or other appropriate means.

(c) Regulations. (1) All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23.

(2) All persons and vessels transiting through the Safety Zone must be authorized by the Captain of the Port or her representative.

(3) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her representative 30 minutes prior to the intended time of transit.

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

(5) To seek permission to transit the Safety Zone, the Captain of the Port or her representative can be contacted via Sector Delaware Bay Command Center (215) 271-4940.

(6) This section applies to all vessels wishing to transit through the Safety Zone except vessels that are engaged in the following operations:

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

(7) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(8) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(9) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(10) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(d) Definitions. The Captain of the Port means the Commander 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.

(e) 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: June 10, 2014

B. COOPER

Captain, U.S. Coast Guard

Acting Captain of the Port Delaware Bay

*[FR Doc. 2014-14631 Filed 06/23/2014 at 8:45 am; Publication
Date: 06/24/2014]*