



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1034]

RIN 1625-AA00

Safety Zone; Port of Ponce Turning Basin, Bahía de Ponce, Ponce, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 100 yard radius of the salvage vessel and associated machinery in the Turning Basin, Bahia De Ponce in Ponce, Puerto Rico (PR). The safety zone is needed to protect personnel, vessels, and the marine environments from potential hazards created by the salvage operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Juan.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 7 p.m. on November 12, 2017. For the purposes of enforcement, actual notice will be used from 7 a.m. on November 5, 2017 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-1034 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Efrain Lopez, Sector San Juan Prevention Department, U.S. Coast Guard; telephone (787) 289-2097, email Efrain.Lopez1@uscg.mil.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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 of a submerged vessel was located in Port of Ponce Turning Basin and immediate action is needed to respond to potential safety hazards associated with emergency salvage operations. It is impracticable to publish an NPRM because a safety zone must be established by November 5, 2017.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to potential safety hazards associated with salvage operations in Port of Ponce Turning Basin.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with emergency salvage operations starting on November 5, 2017 through November 12, 2017, will be a safety concern for anyone within a 100-yard radius of the salvage vessel and associated machinery with the operation. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the obstructions are removed.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. until 7 p.m. on November 5, 2017 through November 12, 2017. The safety zone will cover all navigable waters within 100 yards of vessels and associated machinery being used by personnel to clear the obstructions in Port of Ponce Turning Basin. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the operation is ongoing. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. The majority of vessel traffic will be able to safely transit around the safety zone, which will impact only a portion of the Turning Basin in Ponce, PR for a short period time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the COTP or a designated representative.

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 (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 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 that will prohibit entry within 100 yards of vessels and associated machinery being used by personnel to remove an obstruction in the Port of Ponce. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. 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.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-1034 to read as follows:

§ 165.T07-1034 Safety Zone; Port of Ponce Turning Basin, Bahía de Ponce, Ponce, PR.

(a) Location. The following area is a safety zone: All navigable waters within 100 yards of the salvage vessel and associated machinery operating in Port of Ponce Turning Basin, Ponce, PR in approximate position 17°58'13.50"N 066°37'10.92"W.

(b) Definition. As used in this section, the term “designated representative” includes Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP San Juan in the enforcement of the safety zone.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the COTP San Juan or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the COTP San Juan by telephone at (787) 729-6800, option #4, or the Resident Inspection Office (RIO) Ponce at (787) 284-8423, or a designated representative via VHF-FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative

(d) Enforcement period. This rule will be enforced from 7 a.m. on November 5, 2017 through 7 a.m. on November 12, 2017, unless sooner terminated by the COTP San Juan.

Dated: November 3, 2017.

Francisco S. Rego

Captain, U.S. Coast Guard

Acting Captain of the Port San Juan

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