



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1028]

RIN 1625-AA00

Safety Zone; Atlantic Ocean, Rehoboth Beach, DE

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the Atlantic Ocean, off the coast of Rehoboth Beach, DE and in Breakwater Harbor near Cape Henlopen. Safety zone one is being established for navigable waters in the vicinity of the derrick barge HAAKON during dredging operations, pipe laying operations, diving operations and underwater construction operations. Safety zone two is being established for waters in the vicinity of the working barges and pipeline located in Breakwater Harbor during pipeline fusing and testing operations. This regulation is necessary to provide for the safety of life on navigable waters of Breakwater Harbor and the Atlantic Ocean in the vicinity of the construction operations off the coast of Rehoboth Beach during construction activities. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Delaware Bay.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through February 28, 2018. For the purposes of enforcement, actual notice will be used from November 6, 2017 through [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-2017-1028 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 email Petty Officer Edmund Ofalt, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271-4814, email Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
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 due to the short time period between when Sector Delaware Bay received complete details of this project, October 30, 2017, and the date when these safety zones needed to go into effect. It is impracticable and contrary to the public interest to publish an

NPRM to provide a notice and opportunity for comment period because the safety zones must be established by November 6, 2017, to ensure safety of life on navigable waters in the vicinity of dredging operations, pipe laying operations, diving operations as well as construction operations and to protect mariners from hazards associated with the same.

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. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the hazards presented to safety of life on the Atlantic Ocean off the coast of Rehoboth Beach and in Breakwater Harbor by the presence of dredge, diving and construction equipment.

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 (COTP) Delaware Bay has determined that potential hazards associated with dredging, diving, pipe laying, and construction operations starting November 6, 2017 will be a safety concern for vessels attempting to transit the Atlantic Ocean offshore of Rehoboth Beach and Breakwater Harbor. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters within the safety zones while dredging, diving, pipe laying, and construction operations are being conducted.

IV. Discussion of the Rule

This rule establishes two safety zones from November 6, 2017, through February 28, 2018, unless cancelled earlier by the COTP, to facilitate dredging, diving, pipe laying, and construction operations. Dredging operations will commence on November 6, 2017. The derrick barge HAAKON will begin dredging at approximate coordinates 38°43'43.79"N, 75° 3'32.60"W

and move to the east. Simultaneously, at another location, pipeline fusing operations will begin and pipeline will be connected into two sections of approximately 1,900 feet in length each and one section approximately 1,800 feet in length. Pipeline fusing operations are expected to take approximately 25 days. At the completion of pipeline fusing operations, all the sections of pipeline will be pulled into Breakwater Harbor to approximately 38°47'53.00"N, 75° 6'13.85"W. The two 1,900 foot sections of pipeline will be fused together and tested for continuity for at least 48 hours. When the pipeline proves to be continuous, it will be taken to the location of dredging operations where it will be inserted into a hole which has been horizontally drilled back to the Rehoboth Beach water treatment facility. The 1,800 foot section will then be laid in the trench and connected to the 3,800 foot section. A diffuser of approximately 127 feet will then be connected to the end of the pipe. Upon completion of connections and testing, a portion of the sediment removed during the dredging operations will be placed back over the pipeline and diffuser along with marine matting to ensure stability.

Safety zone one includes all navigable waters within 150 yards of the derrick barge HAAKON and associated dredging, diving, and construction equipment operating in the Atlantic Ocean offshore of Rehoboth Beach, DE, at approximate location 38°43'43.79"N, 75° 3'32.60"W

Safety zone two includes all navigable waters within 150 yards of the platform barge MANSON 76 and all associated equipment, to include pipeline, operating in Breakwater Harbor at approximate location 38°47'53.00"N, 75° 6'13.85"W.

Vessels requesting to enter either safety zone must receive permission from the COTP on VHF-FM channel 16. Vessels may also contact the HAAKON or MANSON 76 in the event of an emergency on VHF-FM channel 68 or 13.

V. Regulatory Analyses

This rule was developed after considering numerous statutes and Executive orders related to rulemaking. Below is a summary of analyses based on a number of these statutes and Executive orders, and 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 zones. Although this regulation will restrict access to regulated areas, the effect of this rule will not be significant because the locations allow for transit around the areas included in the safety zones as well as a reduction in vessel traffic in the areas due to seasonal variations in the quantity of vessel traffic in these locations.

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 safety zones that

encompass all navigable waters within 150 yards of dredging, diving, construction operations and associated equipment. 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 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; 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.T05-1028, to read as follows:

§ 165.T05-1028 Safety Zone; Atlantic Ocean, Rehoboth Beach, DE.

(a) *Location.* The following area are safety zones:

(1) Safety zone one includes all navigable waters within 150 yards of the derrick barge HAAKON and associated equipment operating in the Atlantic Ocean offshore of Rehoboth

Beach, DE, at approximate location 38°43'43.79"N, 75° 3'32.60"W.

(2) Safety zone two includes all navigable waters within 150 yards of the platform barge MANSON 76 and all associated equipment, to include pipeline, operating in Breakwater Harbor at approximate location 38°47'53.00"N, 75° 6'13.85"W.

(3) These coordinates are based on the World Geodetic System 1984 (WGS 84) horizontal datum reference.

(b) *Definitions*—(1) *Captain of the Port* means the Commander 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 his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Delaware Bay, to assist with the enforcement of safety zones described in paragraph (a) of this section.

(c) *Regulations.* The general safety zone regulations found in 33 CFR part 165 subpart C apply to the safety zone created by this section.

(1) Entry into or transiting within either safety zone is prohibited unless vessels obtain permission from the Captain of the Port, via VHF-FM channel 16. Vessels may also contact the derrick barge HAAKON or platform barge MANSON 76, via VHF-FM channel 13 or 68 in an emergency.

(2) Vessels granted permission to enter and transit the safety zone must do so in accordance with any directions or orders of the Captain of the Port, or his designated representative. No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port.

(3) This section applies to all vessels that intend to transit through the safety zone except

vessels that are engaged in the following operations: enforcement of laws; service of aids to navigation, and emergency response.

(d) *Enforcement periods.* This section will be enforced from November 6, 2017, through February 28, 2017.

Dated: November 3, 2017

Scott E. Anderson,

Captain, U.S. Coast Guard,

Captain of the Port, Delaware Bay.

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