



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1053]

RIN 1625-AA00

Safety Zone; Delaware River, Pipeline Removal, Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 250-yard radius of Commerce Construction vessels and machinery conducting diving and pipeline removal operations in the Delaware River, in the vicinity of Anchorage 7, near Marcus Hook, PA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by diving and pipeline removal operations. Entry of vessels or persons into this zone 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 December 8, 2017. For the purposes of enforcement, actual notice will be used from November 21, 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-2017-1053 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 about this rulemaking, call or email Petty Officer Amanda Boone, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271-4889, e-mail Amanda.N.Boone@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 because notification of this pipeline removal project was not given to the Coast Guard until November 15, 2017. It is impracticable to publish an NPRM because we must establish this safety zone by November 21, 2017.

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 because immediate action is needed to address the potential safety hazards associated with diving and pipeline removal operations.

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 Delaware Bay has determined that potential hazards associated with diving and pipe removal operations starting November 21, 2017, will be a safety concern for anyone within a 250-yard radius of diving and pipe removal vessels and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operations are being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from 5:00 AM to 7:00 PM, Monday through Sunday, from November 21, 2017 through December 8, 2017. The safety zone will cover all navigable waters within 250 yards of vessels and machinery being used by personnel to conduct diving and pipe removal operations. There are three sections of pipeline that will be removed. The first two sections of pipeline to be removed are in Anchorage No. 7, Marcus Hook Anchorage, in the Delaware River. During removal of these sections of pipeline, the safety zone will restrict vessels from anchoring in the lower portion of Anchorage No. 7. During removal of the third section of pipeline, operations will be conducted within the main navigational channel and vessels will be required to transit through the lower portion of Anchorage No. 7.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing

arrangements with the towing vessel JOKER in accordance with the Navigational Rules in 33 CFR subchapter E via VHF-FM channel 13 or 80 at least 1 hour, as well as 30 minutes, prior to arrival to arrange safe passage. If vessels are unable to make satisfactory passing arrangements with the towing vessel JOKER, they may request permission from the COTP, or his designated representative, on VHF-FM channel 16. All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16, Local Notice to Mariners, and Marine Safety Information Bulletin further defining specific work locations and traffic patterns.

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 size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Delaware River from 5:00 AM to 7:00 PM, Monday through

Sunday from November 21, 2017 through December 8, 2017 Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16, Local Notice to Mariners, and Marine Safety Information Bulletin about the zone, and the rule would allow vessels to seek permission to enter the zone.

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 250 yards of vessels and machinery being used by personnel to conduct diving and pipe removal operations. 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.T05-1053 to read as follows:

§ 165.T05-1053 Safety Zone, Delaware River; Pipeline Removal; Marcus Hook ,PA

(a) Location. The following areas are safety zones: all navigable waters within 250 yards of the towing vessel JOKER, Commerce Construction crane barge KELLY, and associated diving and pipe removal vessels, as well as any associated equipment, operating in Marcus Hook Range and Anchorage No. 7 near Marcus Hook, PA, on the Delaware River.

(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, or make satisfactory passing

arrangements via VHF-FM channels 13 or 80, with the towing vessel JOKER per this section and the rules of the Road (33 CFR subchapter E). Vessels requesting to transit shall contact the towing vessel JOKER on channel 13 or 80 at least 1 hour, as well as 30 minutes, prior to arrival.

(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, his designated representative, or the towing vessel JOKER. No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port or the towing vessel JOKER.

(3) There are three sections of pipeline that will be removed. The first two sections of pipeline to be removed are in Anchorage No. 7, Marcus Hook Anchorage, in the Delaware River. During removal of these sections of pipeline, the safety zone will restrict vessels from anchoring in the lower portion of Anchorage No. 7.

(4) During removal of the third section of pipeline, operations will be conducted within the main navigational channel and vessels will be required to transit through the lower portion of Anchorage No. 7. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16, Local Notice to Mariners, and Marine Safety Information Bulletin further defining specific work locations and traffic patterns.

(5) All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(6) 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 21, 2017, through December 8, 2017.

Dated: November 20, 2017

Scott E. Anderson

Captain, U.S. Coast Guard,

Captain of the Port, Delaware Bay.

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