



**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:** Interim rule and request for comments.

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**SUMMARY:** This interim rule modifies and extends the effective period of the existing temporary safety zone encompassing all 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. We invite your comments on this rulemaking.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For the purposes of enforcement, actual notice will be used from December 9, 2017, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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].

**ADDRESSES:** Documents mentioned in this preamble are part of Docket Number USCG-2017-1053. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on “Open Docket Folder” on the line associated with this rulemaking. You may submit comments, identified by docket number, using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**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](mailto: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	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Regulatory History and Information**

On November 28, 2017, the Coast Guard published a temporary safety zone titled Safety Zone; Delaware River, Pipeline Removal, Marcus Hook, PA (82 FR 56170). The temporary safety zone established a safety zone from November 21, 2017, through December 8, 2017. The

safety zone covers all navigable waters within 250 yards of vessels and machinery being used by personnel to conduct diving and pipe removal operations. Due to unforeseen issues with the operation, the expected dates of work have been changed and extended to February 28, 2018.

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. Background, Purpose, and Legal Basis**

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 currently underway in the Delaware River, 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 Comments, Changes, and the Interim Rule**

Only two changes have been made to the existing temporary rule. First, the original end date for enforcement of the safety zone was December 8, 2017, and the end date for the enforcement of the safety zone is being changed to February 28, 2018. Second, the enforcement period regulatory text, paragraph (d), has been amended to indicate what time of day the zone will be enforced. This timeframe was discussed in the regulatory analyses statements of the temporary final rule but was not included in the regulatory text itself.

This rule establishes a safety zone from December 9, 2017, through February 28, 2018. 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.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

E.O.s 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. E.O. 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the 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 E.O. 13771.

This regulatory action determination is based on the size, location and duration of the security 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 December 9, 2017, through February 28, 2018. 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 would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels that intend to transit the security zone may be small entities, for the reasons stated in section V.A above this rule would not have a significant economic impact on any vessel owner or operator.

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.

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

#### 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 would 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 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 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 L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration (REC) is 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.

#### 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.

### **VI. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number USCG-2017-1053 for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **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 December 8, 2017, through February 28, 2018. Enforcement will generally be between the hours of 5 a.m. and 7 p.m., Monday through Sunday, while the zone is in effect.

Dated: 8 Dec 2017

Scott E. Anderson  
Captain, U.S. Coast Guard,  
Captain of the Port, Delaware Bay.  
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