

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1063]

RIN 1625-AA00

Safety Zones, Delaware River; Maintenance Dredging

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing temporary safety zones in portions of New Castle Range, Marcus Hook Range, Deepwater Point Range, and Anchorage 7 off Marcus Hook Range on the Delaware River. The safety zones will temporarily restrict vessel traffic from transiting or anchoring in a portion of the Delaware River while dredging operations are being conducted to facilitate the Delaware River annual maintenance project for the main navigational channel of the Delaware River. This regulation is necessary to provide for the safety of life on navigable waters of the Delaware River, in the vicinity of dredging activity and is intended to protect mariners from the hazards associated with pipe-laying and dredging operations.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through May 31, 2019. For the purposes of enforcement, actual notice will be used from January 15, 2019, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must be received by the Coast Guard on or before [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1063 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG-2018-1063 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone (215) 271-4889, e-mail

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 because doing so would be impractical and contrary to the public interest. Final details for the dredging operation were not received by the Coast Guard until January 9, 2019. Vessels transiting through New Castle Range, Marcus Hook Range, Deepwater Point Range, or entering the waters of Anchorage 7 off Marcus Hook Range during dredging operations may be at risk. We are taking immediate action to help protect the safety of the project personnel, vessels, and the marine environment on the navigable waters within the safety zones while dredging is being conducted. It is important to have these regulations in effect during dredging operations and it is impracticable to delay the regulations.

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** because doing so would be contrary to the public interest. Allowing this dredging operation to go forward without safety zones in place would expose mariners and the public to unnecessary dangers.

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 operations beginning on or after January 15, 2019, will be a safety concern for vessels attempting to transit the Delaware River, along New Castle Range, Marcus Hook Range, Deepwater Point Range, and Anchorage 7 off Marcus Hook

Range. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters within the safety zones while dredging operations are being conducted.

IV. Discussion of the Rule

This rule establishes safety zones on portions of the Delaware River from January 15, 2019 until May 31, 2019, unless cancelled earlier by the COTP. The safety zones are necessary to facilitate the main channel annual maintenance of New Castle Range, Marcus Hook Range, Deepwater Point Range, and Anchorage 7 off Marcus Hook Range (as described in 33 CFR 110.157(a)(8)). Maintenance dredging in the channel will most likely be conducted with the dredge ESSEX, though other dredges may be used, along with associated dredge pipeline and boosters. The pipeline consists of a combination of floating hoses immediately behind the dredge and submerged pipeline leading to upland disposal areas. Due to the hazards related to dredging operations, the associated pipeline, and the location of the submerged pipeline, safety zones are being established in the following areas:

- 1) Safety zone one includes all navigable waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27 and all related dredge equipment when the dredge is operating in New Castle Range, Marcus Hook Range, Deepwater Point Range, and Anchorage 7. This safety zone is being established for the duration of the maintenance project. Vessels requesting to transit the safety zone must contact the dredge on VHF channel 13 or 16 at least 1 hour prior to arrival to arrange safe passage. At least one side of the main navigational channel will be kept clear for safe passage of vessels in the vicinity of the

safety zone. At no time will the entire main navigational channel be closed to vessel traffic. Vessels should avoid meetings in these areas where one side of the main navigational channel is open and proceed per this rule and the Rules of the Road (33 CFR subchapter E).

2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8). Vessels wishing to anchor in Anchorage 7 off Marcus Hook Range must obtain permission from the COTP at least 24 hours in advance by calling (215) 271-4807. The COTP will permit only one vessel to anchor at a time on a “first-come, first-served” basis. Vessels will only be allowed to anchor for a 12 hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage by the COTP for the required inspection. Vessels are encouraged to use Anchorage 9 near the entrance to Mantua Creek, Anchorage 10 at Naval Base, Philadelphia, and Anchorage 6 off Deepwater Point Range as alternative anchorages.

Entry into, transiting, or anchoring within safety zone one is prohibited unless vessels obtain permission from the COTP or make satisfactory passing arrangements with the operating dredge per this rule and the Rules of the Road (33 CFR subchapter E). Though the dredge ESSEX is the primary dredge to be used in these operations, the COTP may update the information and the dredge being utilized with these dredging operations via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

The COTP will activate and terminate the safety zones individually once all submerged pipeline has been recovered and dredging operations are completed in each respective range. Notice of the activation and the termination of the safety zones will be

made in accordance with 33 CFR 165.7.

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, it 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 there are a number of alternate anchorages available for vessels to anchor. Furthermore, vessels may transit through the safety zone with the permission of the COTP or make satisfactory passing arrangements with the dredge ESSEX or other dredges that may be used in accordance with this rule and the Rules of the Road (33 CFR subchapter E). Notification of the safety zones to the maritime public will be made via maritime advisories allowing mariners to alter their plans accordingly.

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 zones 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 it 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 close only one side of the main navigational channel and vessels can request permission to enter the channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration (REC) 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.

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 this rulemaking. 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.

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, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this TIR 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 Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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.T05-1063 to read as follows:

§ 165.T05-1063 Safety Zones, Delaware River; Maintenance Dredging.

(a) Location. The following areas are safety zones:

(1) Safety zone one includes all waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27, as well as all related dredge equipment, while the dredge is operating in New Castle Range, Marcus Hook Range, and Deepwater Point Range. For enforcement purposes, New Castle Range, Marcus Hook Range, and Deepwater Point Range include all navigable waters of the Delaware River shoreline to shoreline, bound by a line drawn perpendicular to the center line of the channel at the farthest upriver point of the range to a line drawn perpendicular to the center line of the channel at the farthest downriver point of the range.

(2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8), which is depicted on U. S. Nautical Chart 12312.

(b) Definitions. As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a Federal, State, or local law enforcement vessel assisting the Captain of the Port, Delaware Bay in the enforcement of the safety zone.

(c) Regulations. (1) Entry into or transiting within safety zone one in paragraph (a)(1) of this section is prohibited unless vessels obtain permission from the Captain of the Port via VHF-FM channel 16 or 215-271-4807, or make satisfactory passing arrangements via VHF-FM channel 13 or 16 with the operating dredge per this section

and the rules of the road (33 CFR subchapter E). Vessels requesting to transit shall contact the operating dredge via VHF-FM channel 13 or 16 at least 1 hour prior to arrival.

(2) Vessels granted permission to enter and transit safety zone one in paragraph (a)(1) of this section must do so in accordance with any directions or orders of the Captain of the Port, his designated representative, or the dredge. No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port or the dredge.

(3) All vessels transiting safety zone one in paragraph (a)(1) of this section must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(4) Vessels desiring to anchor in safety zone two in paragraph (a)(2) of this section, Anchorage 7 off Marcus Hook Range, must obtain permission from the COTP at least 24 hours in advance by calling (215) 271-4807. The COTP will permit one vessel at a time to anchor on a “first-come, first-served” basis. Vessels will only be allowed to anchor for a 12 hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage for the required inspection by the COTP.

(5) This section applies to all vessels except those engaged in the following operations: enforcement of laws, service of aids to navigation, and emergency response.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zones by Federal, State, and local agencies.

(e) Enforcement period. These zones will be enforced 24 hours a day while operations are being conducted from January 15, 2019 through May 31, 2019 unless

cancelled earlier by the COTP.

Dated: January 14, 2019.

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