



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0031]

RIN 1625-AA00

Safety Zone; Delaware River Rock Blasting, Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Delaware River between Marcus Hook Range and Tinicum Range. The safety zone will temporarily restrict vessel traffic from transiting or anchoring in portions of the Delaware River while rock blasting, dredging, and rock removal operations are being conducted to facilitate the Main Channel Deepening project for the Delaware River. The safety zone is needed to protect personnel, vessels, and the marine environment from hazards created by rock blasting, dredging, and rock removal operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the COTP or his designated representatives.

DATES: This rule is effective from February 10, 2019, through March 15, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0031 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 Edmund Ofalt, U.S. Coast Guard Sector Delaware Bay, Waterways Management Branch; telephone (215) 271-4889, e-mail Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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 it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for blasting operations. The rule must be in force by February 10, 2019, to serve its purpose of ensuring the safety of personnel, vessels, and the marine environment from hazards associated with rock blasting, dredging, and rock removal operations.

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 potential safety hazards associated with rock blasting, dredging and rock removal operations in this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that there are potential hazards associated with the rock blasting and dredging operations. This rule is needed to ensure the safety of personnel, vessels, and the marine environment within a 500-yard radius of rock blasting, dredging, and rock removal operations

IV. Discussion of the Rule

This rule establishes a safety zone from February 10, 2019, through March 15, 2019. The safety zone covers all navigable waters in the Delaware River within 500 yards of vessels and machinery being used to conduct rock blasting, dredging, and rock removal operations between Marcus Hook Range and Tinicum Range. The safety zone will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonations are being conducted and shortly thereafter, when the channel is being surveyed to ensure the navigational channel is clear for vessels to transit. These detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel will be open for vessels to transit. This rule

describes communications for notifying waterway users of upcoming detonations and provides means for waterway users to request entry into the safety zone.

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, duration, and traffic management of the safety zone. The safety zone will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonations are being conducted. The blasting detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel will be open for vessels to transit. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic is limited during the times of detonation and Broadcast Notice to Mariners are made via VHF-FM marine channel 13 and 16 when blasting operations will occur.

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 Directive 023-01 and Commandant Instruction M16475.1D, 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 to protect waterway users that would prohibit entry within 500 yards of rock blasting, dredging, and rock removal. 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 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 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.T05-0031 to read as follows:

§ 165.T05-0031 Safety Zone, Delaware River Rock Blasting; Marcus Hook, PA.

(a) **Location.** The following area is a safety zone: all the navigable waters of the Delaware River within 500 yards of vessels and machinery performing rock blasting, rock removal, and dredging operations, between Marcus Hook Range and Tinicum Range.

(b) **Definitions.** As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to assist with enforcement of the safety zone described in paragraph (a) of this section.

(c) **Regulations.** (1) Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing arrangements with the drill boat APACHE or the dredges TEXAS and NEW YORK, as applicable, in accordance with the Navigational Rules in 33 CFR subchapter E via VHF-FM channel 13 at least 30 minutes prior to arrival. If vessels are unable to make satisfactory passing arrangements with the drill boat APACHE or the dredges TEXAS and NEW YORK, they may request permission from the Captain of the Port, or his designated representative, on VHF-FM

channel 16.

(2) The operator of any vessel requesting to transit through the safety zone shall proceed as directed by the drill boat APACHE, the dredges TEXAS and NEW YORK, or the designated representative of the Captain of the Port and must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(3) No vessel may transit through the safety zone during times of explosive detonation. During explosive detonation, vessels must maintain a 500-yard distance from the drill boat APACHE. The drill boat APACHE will make broadcasts, via VHF-FM Channel 13 and 16, at 15 minutes, 5 minutes, and 1 minute prior to detonation, as well as a countdown to detonation on VHF-FM Channel 16.

(4) After every explosive detonation the dredging contractor will conduct a survey to ensure the navigational channel is clear for vessels to transit. The drill boat APACHE will broadcast, via VHF-FM channel 13 and 16, when the survey has been completed and the channel is clear to transit. Vessels requesting to transit through the safety zone shall proceed as directed by the Captain of the Port and contact the drill boat APACHE on VHF-FM channel 13 to make safe passing arrangements.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local

agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This rule will be enforced from February 10, 2019, through March 15, 2019, unless cancelled earlier by the Captain of the Port.

Dated: February 4, 2019.

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

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