



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0344]**

**RIN 1625-AA00**

**Safety Zone, Object Removal; Delaware River and Bay, Philadelphia, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of the Delaware River and Bay within 250 yards of the bucket dredge KOKO VI, towing vessel GEORGETOWN, the deck barge BC 45, and all associated equipment while object removal, dredging, and diving operations are taking place. This safety zone is needed to protect personnel, vessels, and the marine environment from hazards created by the aforementioned operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Delaware Bay (COTP) or his designated representatives.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through October 15, 2020. For the purposes of enforcement, actual notice will be used from June 18, 2020, 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:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0344 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) 271-4889, e-mail [Edmund.J.Ofalt@uscg.mil](mailto:Edmund.J.Ofalt@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this interim final 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 object removal, dredging and diving operations. The rule needs to be issued and enforceable with actual notice by June 18, 2020, to serve its purpose of ensuring the safety of the general public from hazards associated with these 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 object removal, dredging and diving operations within 250 yards of the bucket dredge KOKO VI, towing vessel GEORGETOWN, barge BC 45, and all associated equipment.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the rule are necessary we will publish a temporary final rule or other appropriate document.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with the object removal, dredging and diving operations. The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment within a 250-yard radius of these operations.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from June 18, 2020, through October 15, 2020. The safety zone is necessary to facilitate the main channel deepening of the Delaware

River and Bay. Object removal operations will most likely be conducted with the dredge KOKO VI, towing vessel GEORGETOWN, and deck barge BC 45, though other dredges or vessels may be used, along with associated equipment. Due to the hazards related to these operations a safety zone is being established for all navigable waters within 250 yards of the vessels conducting these operations.

Entry into, transiting or anchoring within the safety zone is prohibited unless the vessel obtains permission from the COTP or makes satisfactory passing arrangements with the operating dredge per this rule and the Rules of the Road (33 CFR subchapter E). Though the dredge KOKO VI, towing vessel GEORGETOWN, and deck barge BC 45 are the primary vessels to be used in these operations, the COTP may update the information and the vessels being utilized with these operations via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

## **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, and duration of the safety zone. The safety zone will be enforced in a manner that does not conflict with transiting commercial and recreational traffic. Vessels may transit through or around the safety zone if satisfactory passing arrangements can be agreed upon.

*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 call or email 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.

*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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 250 yards of object removal, dredging and diving operations within and around the main navigational channel. Vessels may request permission to enter or transit through the safety zone. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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 us amend this regulation so that it provides a better solution to the problem we seek to address. We may issue a temporary final rule or other appropriate document in response to your comments. 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 <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email 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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this temporary interim rule as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions.

### **List of Subjects in 33 CFR Part 165**

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: 46 U.S.C. 70034, 70051; 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.T05-0344, to read as follows:

**§ 165.T05-0344 Safety Zone, Object Removal; Delaware River and Bay, Philadelphia, PA**

(a) *Location.* The following area is a safety zone: All navigable waters within 250 yards of the dredge KOKO VI, the towing vessel GEORGETOWN, the deck barge BC 45, and all associated equipment while conducting object removal, dredging and dive operations within the Delaware Bay and River.

(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) Entry into or transiting within the safety zone identified in paragraph (a) of this section is prohibited unless vessels obtain permission from the Captain of the Port or his designated representatives via VHF-FM channel 16 or 215-271-4807, or make satisfactory passing arrangements via VHF-FM channel 13 or 8 with the operating dredge per this section and the rules of the Road (33 CFR subchapter E). To

avoid transit delays, vessels requesting to transit should contact the operating dredge via VHF-FM channel 13 or 8 at least 1 hour prior to arrival.

(2) 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 agencies.* 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 section will be enforced from June 18, 2020, through October 15, 2020, unless cancelled earlier by the Captain of the Port.

Dated: June 18, 2020.

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

[FR Doc. 2020-13507 Filed: 7/13/2020 8:45 am; Publication Date: 7/14/2020]