



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0010]

RIN 1625-AA00

Safety Zone: Maintenance Dredging 35-Foot Channel and Rock Removal; Portland Harbor, Portland, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone around the blasting and dredging project taking place in Portland Harbor between Portland and South Portland, Maine. This safety zone is required to protect users of the waterway from the safety hazards associated with this blasting and dredging project, which is being undertaken to increase the water depth of the main channel to 35 feet. Entry into this safety zone is prohibited unless authorized by the Captain of the Port (COTP) Northern New England.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until March 31, 2014. For the purposes of enforcement, actual notice will be used from the date the rule was signed, February 6, 2014, until

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

This rule will be enforced at various dates and times to be determined (TBD) to accommodate dredging and blasting operations, and will be advertised via Local Notice to Mariners and Broadcast Notice to Mariners.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0010]. 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 also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade Elizabeth Gunn, U.S. Coast Guard, Sector Northern New England, Waterways Management Division, via telephone at (207) 767-0398 or email at [Elizabeth.V.Gunn@uscg.mil](mailto:Elizabeth.V.Gunn@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, via telephone at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 United States Code (USC) 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 those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 USC 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 the Army Corps of Engineers (ACOE) notified the Coast Guard of the blasting operations on January 8, 2014. This notice was not received in sufficient time for the Coast Guard to solicit public comments before the start of blasting operations. Consequently, waiting for a comment period to run before publishing this rule would inhibit the Coast Guard's ability to keep the boating public safe and, thus, would be impracticable and contrary to the public interest. Because blasting and dredging operations must be completed by March 15, 2014, in accordance with Maine Department of Environmental

Protection (DEP) permitting, it would not be feasible for the project to be delayed or rescheduled. Immediate action is needed to protect the maritime public from the potential hazards associated with blasting operations, which include the use of explosives below the waterline. This regulation is necessary to ensure the immediate safety of users of the waterway.

Under 5 USC 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. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to the public interest.

#### B. Basis and Purpose

The legal basis for the temporary rule is 33 USC 1226, 1231, 46 USC Chapter 701, 3306, 3703; 50 USC 191, 195; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

As part of the Maintenance Dredging 35-Foot Channel and Rock Removal Project, the Army Corps of Engineers must blast and dredge in portions of the Portland Harbor near Portland and South Portland, Maine. Due to inherent dangers associated with blasting and dredging operations, a safety zone is necessary to

help ensure the safety of the maritime public operating near the work site. The potential explosive arc for each blasting site has been calculated to be approximately 600 feet.

The project is also required to comply with applicable state laws.

### C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters, from the surface to the bottom of Portland Harbor, in the vicinity of the Army Corps of Engineers' Maintenance Dredging 35-Foot Channel and Rock Removal Project work site between Portland and South Portland, Maine, from the Portland Fish Pier at 43°39'03"N, 70°15'09"W across to the Coast Guard Base Pier at 43°38'47"N, 70°14'53"W then downstream to the Maine State Pier at 43°39'20"N, 70°14'48"W and across to Portland Pipeline Pier 1 at 43°39'11"N, 70°14'35"W. This safety zone will encompass multiple blasting sites within a concentrated area of Portland Harbor. The safety zone will be enforced only within 600 feet of each blast site, and only for a short duration of time prior to, during, and after each detonation. Notice of the safety zone enforcement will be advertised via Local Notice to Mariners, Safety Marine Information Broadcast (SMIB) broadcast over Channel 16, and by actual notice on site. Vessels will be able to transit areas outside of the 600 yard radius surrounding

each blast site. In addition, vessels may be able to transit through the enforced portions of the safety zone with permission of the COTP or his designated representative. To request permission to transit within the safety zone, the COTP can be contacted via telephone at (207)767-0303, or by radio on VHF Marine Band Radio, channel 16. The safety zone will be in effect from 12:01 a.m. on February 10, 2014 to 11:59 p.m. on March 31, 2014.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard has made this determination based primarily on the fact that maritime traffic will be allowed to transit the safety zones with permission from the COTP so

there should be little to no economic impact. Further, the safety zone will only be enforced for short durations before and during the actual blasting activity.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 USC 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 USC 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The following entities may be affected by this rule, some of which may be small entities: The owners and operators of vessels intending to operate, transit, or anchor in a portion of Portland Harbor during the effective times of the safety zone. The safety zone will not have a significant impact on a substantial number of small entities for the following reasons. The enforcement area of the safety zone will be limited to those areas where actual blasting is taking place. Vessels will be able to transit all other areas inside the safety zone where active blasting activities are not taking place. The Coast Guard will make enforcement notifications via maritime advisories so mariners can

adjust their plans accordingly. The safety zone will only be enforced for short durations before and during the actual blasting activity.

### 3. Assistance for Small Entities

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 will 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, above.

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.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 USC 3501-3520).

#### 5. Federalism

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 determined that this rule does not have implications for federalism.

#### 6. 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.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 USC 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.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

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.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 USC 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 regulations regarding safety zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. This rule involves creation of a temporary safety zone for a limited period of time. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES.

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 USC 1226, 1231; 46 USC 701, 3306, 3703; 50 USC 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0010 to read as follows:

§165.T01-0010 Safety Zone; Maintenance Dredging 35-Foot Channel and Rock Removal; Portland Harbor, Portland, ME.

(a) Location. The following area is a safety zone: All navigable waters, from the surface to the bottom of Portland Harbor, from the Portland Fish Pier at 43°39'03"N, 70°15'09"W across to the Coast Guard Base Pier at 43°38'47"N, 70°14'53"W then downstream to the Maine State Pier at 43°39'20"N, 70°14'48"W and across to Portland Pipeline Pier 1 at 43°39'11"N, 70°14'35"W.

(b) Definitions. The following definitions apply to this section:

(1) "Designated representative" means any U.S. Army Corps of

Engineers personnel, any commissioned, warrant, or petty officer of the U.S. Coast Guard, and any member of the Coast Guard Auxiliary who has been designated by the Captain of the Port (COTP) Sector Northern New England, to act on the COTP's behalf.

(2) "Official patrol vessel" means any Coast Guard, Coast Guard Auxiliary, Army Corp of Engineers, state, or local law enforcement vessel assigned or approved by the COTP.

(c) Effective Period. This section is effective from February 10, 2014 to March 31, 2014.

(d) Regulations. (1) The general regulations in 33 CFR 165.23 apply.

(2) Entry, transit, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining or anchoring within a 600 foot radius of blasting operations within the safety zone is prohibited unless authorized by the COTP.

(3) Upon being hailed by a U.S. Coast Guard vessel, U.S. Army Corps of Engineers vessel or a designated representative, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter, transit, dive, dredge, dump, fish, trawl, conduct salvage operations, remain within, or anchor within the safety zone must contact the COTP or the designated representative via the Sector Northern New England Command Center by VHF channel 16 or by phone at (207) 767-0303.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative.

Dated: February 6, 2014

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A. J. Ceraolo  
Commander, U. S. Coast Guard  
Acting Captain of the Port  
Sector Northern New England

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