



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0084]

RIN 1625-AA00

Safety Zone; Operational Equipment Test; Bellingham Bay;

Bellingham, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a 500-yard temporary safety zone around barge Togiak Trader and tug Rosario within the Bellingham Bay Explosive Anchorage. The safety zone is necessary to ensure the safety of the maritime public due to an operational equipment test utilizing compressed air onboard that vessel. The safety zone will prohibit any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or his Designated Representative.

**DATES:** This rule is effective from 5 p.m. on February 8, 2017, to 5 a.m. on February 10, 2017. It will only be enforced during two periods: from 5 p.m. on February 8, 2017, to 5 a.m. on February 9, 2017, and from 5 p.m. on February 9, 2017, to 5 a.m.

on February 10, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0084 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 MST1 Wayne Lau, Waterways Management Division, U.S. Coast Guard; telephone 206-217-6051, e-mail SectorPugetSoundWWM@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
Pub. L.	Public Law
§	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 publishing an NPRM would be impracticable as delayed promulgation may result in injury or damage to the maritime public from an operational equipment test in Bellingham Bay prior to conclusion of a notice and comment period.

We are issuing this rule, and under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because of the potential maritime hazards associated with the operational equipment tests that are the subject of this rule will occur from February 8 through 10, 2017, and this rule must be effective during these tests to protect against those hazards.

### **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, Puget Sound has determined that potential hazards associated with operational equipment tests will be a safety concern for anyone transiting through the location of the operation. This rule is needed to ensure the safety of the maritime public from hazards associated with operational equipment tests in Bellingham Bay.

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

This rule establishes a temporary safety zone that will be enforced during two 12-hour periods: from from 5 p.m. on February

8, 2017, to 5 a.m. on February 9, 2017, and on from 5 p.m. on February 9, 2017, to 5 a.m. on February 10, 2017. The safety zone will cover all navigable waters within 500 yards of the barge Togiak Trader (ON:637310) and tug Rosario (ON:585319), located near 48°42'48"N 122°33'37"W, within the explosives anchorage in Bellingham Bay.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while operational equipment testing is being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative while the zone is subject to enforcement. Vessels wishing to enter the safety zone during the two enforcement periods must request permission to do so from the Captain of the Port, Puget Sound by contacting the Joint Harbor Operations Center at 206-217-6001 or the on-scene patrol craft, if any, via VHF-FM Channel 16.

## **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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the limited nature of the size and duration of the temporary safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Bellingham Bay. Moreover, the Coast Guard will issue a Special Marine Information Broadcast via VHF-FM Channel 16 about the safety zone and the rule allows vessels to seek permission to enter the safety 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 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 above, this rule will not have a significant economic impact on any vessel owner or operator, because the zone established in this rule is limited in nature of size and duration.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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 M16475.1D, 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 temporary safety zone that is limited in duration that will prohibit entry within 500 yards of the designated area. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are 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.

**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.T13-0084 to read as follows:  
§ 165.T13-0084 Safety Zone; Operational Equipment Test; Bellingham Bay; Bellingham, WA.

(a) Location. The following area is designated as a safety zone: all waters 500 yards around barge Togiak Trader (ON:637310)

and tug Rosario (ON:585319), moored in vicinity of 48°42'48"N 122°33'37"W, within the Bellingham Bay explosives anchorage.

(b) Regulations. In accordance with the general regulations in subpart C of this part, no person or vessel may enter or remain in the safety zone while it is subject to enforcement as specified in paragraph (c) of this section unless authorized by the Captain of the Port, Puget Sound or his designated representative. To request permission to enter the safety zone, contact the Joint Harbor Operations Center at 206-217-6001, or the on-scene patrol craft, if any, via VHF-FM Channel 16.

(c) Enforcement periods. This section will be enforced from from 5 p.m. on February 8, 2017, to 5 a.m. on February 9, 2017, and from 5 p.m. on February 9, 2017, to 5 a.m. on February 10, 2017.

Dated: February 2, 2017

M. W. Raymond,  
Captain, U.S. Coast Guard,  
Captain of the Port Puget Sound.

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