



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0279]

RIN 1625-AA00

Safety Zone, Delaware River; Dredging

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing temporary safety zones in portions of Marcus Hook Range, Deepwater Point Range, and New Castle Range, on the Delaware River, to facilitate the annual maintenance dredging of the Federal Navigation Channel. The safety zones will be established for the waters in the vicinity of the dredge and associated pipeline, including dredge pipe which is located in Marcus Hook Anchorage No. 7 and Pea Patch Island Anchorage No. 5. 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] until September 1, 2017. For purposes of enforcement, actual notice will be used from June 17, 2017 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0279 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 Amanda Boone, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271-4814, e-mail [Amanda.N.Boone@uscg.mil](mailto:Amanda.N.Boone@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**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 June 15, 2017. Vessels

transiting through New Castle Range, Deepwater Point Range, Marcus Hook Range or attempting to enter the waters of Marcus Hook Anchorage No. 7 and Pea Patch Island Anchorage No. 5 during pipe-laying or dredging operations may be at risk. Delaying this rule for the purpose of providing a notice and comment period would be contrary to the public interest as it would inhibit the Coast Guard's ability to protect the public from the hazards associated with pipe-laying and dredging operations. 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 and pipe laying 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; 33 CFR 1.05-1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. The Captain of the Port (COTP), Delaware Bay, has determined that potential hazards associated with dredging and pipe laying operations, beginning June 17, 2017, will be a safety concern for vessels attempting to transit the Delaware River, along New Castle Range, Deepwater Point Range, Marcus Hook Range or attempting to enter the waters of Marcus Hook Anchorage No. 7 and Pea Patch Island Anchorage No. 5. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters within the safety zones while dredging is being conducted.

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

The Coast Guard Captain of the Port is temporarily establishing safety zones on portions of the Delaware River from June 17, 2017 until September 1, 2017, unless cancelled earlier by the Captain of the Port, to facilitate maintenance dredging being conducted in New Castle Range, Deepwater Point Range and Marcus Hook Range. Maintenance dredging in the channel will be conducted with the cutter suction dredge ILLINOIS and associated pipeline. Pipeline will be a combination of floating hoses immediately behind the dredge and submerged pipeline leading to upland disposal areas. Due to the hazards related to cutter suction dredging, the associated pipeline, and the location of the submerged pipeline, safety zones will be established in the following areas:

1) Safety zone one includes all waters within 150 yards of the dredge and all related dredge equipment. The safety zone will be established for the duration of the maintenance project. Vessels requesting to transit shall contact the dredge ILLINOIS on VHF channel 13 or 16, at least 1 hour, as well as 30 minutes, prior to arrival.

2) Safety zone two includes all the waters of Pea Patch Island Anchorage No. 5 found in 33 CFR 110.157(a)(6), where submerged pipeline will be located which poses a risk to anchored vessels. The safety zone will be in place only during the time in which the dredge ILLINOIS is conducting dredging operations in New Castle Range. Vessels requesting to transit shall contact the dredge ILLINOIS on VHF channel 13 or 16, at least 1 hour, as well as 30 minutes, prior to arrival.

3) Safety zone three includes all the waters of Marcus Hook Anchorage No. 7 found in 33 CFR 110.157(a)(8). Vessels requesting to transit Marcus Hook Range shall

contact the dredge ILLINOIS on VHF channel 13 or 16, at least 1 hour, as well as 30 minutes, prior to arrival. Vessels shall then transit around the dredge project area, utilizing Marcus Hook Anchorage, while operating at the minimum safe speed necessary to maintain steerage and reduced wake. Vessels wishing to anchor in Marcus Hook Anchorage No. 7 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. Vessels are encouraged to use Mantua Creek Anchorage No.9, Naval Base Philadelphia Anchorage No. 10, and Deepwater Point Anchorage No. 6 as alternative anchorages.

Entry into, transiting, or anchoring within the safety zones is prohibited unless vessels obtain permission from the Captain of the Port or make satisfactory passing arrangements with the dredge ILLINOIS per this rule and the Rules of the Road (33 CFR chapter I, subchapter E).

The Captain of the Port will implement and terminate the safety zones individually once all submerged pipeline has been recovered and dredging operations are completed in each range respectively. Notice of the implementation and the termination of the safety zone 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 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 Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

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 be permitted to transit through the safety zone with the permission of the Captain of the Port or make satisfactory passing arrangements with the dredge ILLINOIS in accordance with this rule and the Rules of the Road (33 CFR chapter I, subchapter E). Extensive 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 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 (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 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 adjusts rates in accordance with applicable statutory and regulatory mandates. It is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(g) of the Instruction, which pertains to minor regulatory changes that are editorial or procedural in nature. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble.

#### 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 temporary § 165.T05-0279 to read as follows:

§ 165.T05-0279 Safety Zone, Delaware River; Dredging.

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

(1) Safety zone one includes all waters within 150 yards of the dredge ILLINOIS and all related dredge equipment.

(2) Safety zone two includes all the waters of Pea Patch Island Anchorage No. 5 found in 33 CFR 110.157(a)(6), where submerged pipeline will be located causing a hazard to anchoring vessels. The safety zone will be in place only during the time in which the dredge ILLINOIS is conducting dredging operations in New Castle Range.

(3) Safety zone three includes all the waters of Marcus Hook Anchorage No. 7 found in 33 CFR 110.157(a)(8). The safety zone will be in place only during the time in which the dredge ILLINOIS is conducting dredging operations in Marcus Hook Range.

(b) Definitions. (1) The Captain of the Port (COTP) means the Commander Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on their behalf.

(2) Designated representative means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Delaware Bay, to assist with the enforcement of safety zones described in paragraph (a) of this section.

(c) Regulations. The general safety zone regulations found in subpart C of this part apply to the safety zone created by this section.

(1) Safety zone two will be in place only during the time that dredge ILLINOIS is conducting dredging operations in New Castle Range. Safety zone three will be in place only during time in which the dredge ILLINOIS is conducting dredging operations in Marcus Hook Range.

(2) Vessels requesting to transit Marcus Hook Range shall contact the dredge ILLINOIS on VHF channel 13 or 16, at least 1 hour, as well as 30 minutes, prior to arrival. Vessels shall then transit around the dredge project, utilizing Marcus Hook Anchorage, while operating at the minimum safe speed necessary to maintain steerage and reduced wake.

(3) Vessels wishing to anchor in Marcus Hook Anchorage No. 7 during the time in which the dredge ILLINOIS is conducting dredging operations in 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. Vessel 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 Mantua Creek Anchorage No.9, Naval Base Philadelphia Anchorage No. 10, and Deepwater Point Anchorage No. 6 as alternative anchorages.

(4) The Captain of the Port will implement and terminate the safety zones individually once all submerged pipeline has been recovered and dredging operations are completed in each range respectively. Notice of the implementation and the termination of the safety zone will be made in accordance with § 165.7.

(5) Entry into, transiting, or anchoring within the safety zone is prohibited unless vessels obtain permission from the Captain of the Port or make satisfactory passing arrangements, via VHF-FM channel 16, with the dredge ILLINOIS per this rule and the Rules of the Road (33 CFR chapter I, subchapter E).

(6) To request permission to enter the safety zone, the Captain of the Port’s

representative can be contact via VHF-FM channel 16. Vessels granted permission to enter and transit through the safety zone must do so in accordance with the directions provided by the Captain of the Port or designated representative. No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port. All persons and vessels within a safety zone shall obey the directions or orders of the Captain of the Port or their designated representative.

(7) At least one side of the main navigational channel will be kept clear for safe passage of vessels in the vicinity of the safety zones. At no time will the main navigational channel be closed to vessel traffic. Vessels requesting to transit shall contact the dredge ILLINOIS on VHF channel 13 or 16, at least 1 hour, as well as 30 minutes, prior to arrival.

(8) This section applies to all vessels that intend to transit through the safety zones except vessels that are engaged in the following operations: enforcement of laws; service of aids to navigation, and emergency response.

(d) Enforcement. These safety zones will be enforced with actual notice by the U.S. Coast Guard representatives on scene, as well as other methods listed in § 165.7.

Dated: June 16, 2017.

Benjamin A. Cooper,  
Captain, U. S. Coast Guard,  
Captain of the Port, Delaware Bay.

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