



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0400]

RIN 1625-AA00

Safety Zone, Delaware River; Pipe-Removal

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish temporary safety zones in portions of Billingsport Range, on the Delaware River, to facilitate the removal of existing pipelines along the river bed of the Federal Navigation Channel. The safety zones would be established for the waters of Billingsport Range, on the Delaware River, in the vicinity of working vessels and associated equipment. At times the working vessels and equipment may be in close proximity or impede the navigation channel. This regulation is necessary to provide for the safety of life on navigable waters of the Delaware River, in the vicinity of pipeline-removal operations, and is intended to protect mariners from the associated hazards.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2017-

0400 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or if email Petty Officer Amanda Boone, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271-4889, e-mail 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	Federal Register
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background, Purpose, and Legal Basis

Paulsboro Natural Gas Pipeline Company and Buckeye Partners, L.P. notified the Coast Guard that removal of portions of old natural gas pipelines will need to be conducted in compliance with the Army Corps of Engineers request for removal due to the upcoming widening and deepening of the Delaware River, main navigational channel, in which the depth of the channel will be taken to 45 feet. The Captain of the Port Delaware Bay has determined that potential hazards associated with the pipe-removal operational would be a safety concern for anyone within a 150-yard radius of the working vessels.

The Coast Guard is proposing to issue 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, Delaware Bay, has determined that potential hazards associated with pipe-removal operations, beginning on or about July 29, 2017, will be a safety concern for vessels attempting to transit the Delaware River, along Billingsport Range.

This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters within the safety zone while removal of the pipeline is being conducted.

III. Discussion of Proposed Rule

The Coast Guard Captain of the Port is proposing to establish temporary safety zones on portions of the Delaware River on or about July 29, 2017, until October 31, 2017, unless cancelled earlier by the Captain of the Port, to facilitate the removal of existing pipeline on the river bed of the Delaware River, along the Billingsport Range.

With plans to widen the commercial shipping channel in the Delaware River, the U.S. Army Corp of Engineers (ACOE) has requested both Paulsboro Natural Gas Pipeline Company, LLC (PBF) and Buckeye Partners, L.P. (BPL) modify their existing pipelines across the river that could cause hazards to mariners in the expanded shipping channel. This specifically pertains to PBF's 8" natural gas pipeline and BPL's 10" and 12" pipelines that run adjacent to Philadelphia International Airport to the Paulsboro Refinery. Due to the hazards related to underwater pipe-removal operations, safety zones will be established on the Delaware River waters within 150 yards of the working vessel(s) and related equipment.

The proposed safety zones will be established for the duration of the pipe-removal operation. Vessels that desire to enter or transit through the safety zones will be required

to contact working vessels on VHF-FM marine band channel 13 or 16, at least 1 hour prior to arrival.

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 working vessels on scene per this rule and the Rules of the Road (33 CFR subchapter E).

The Captain of the Port will implement and terminate the safety zone once all pipelines have been recovered and removal operations are completed. Notice of the implementation and the termination of the safety zone will be made in accordance with 33 CFR 165.7.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 zones. Although this regulation will restrict access to regulated areas, the effect of this rule will not be significant because 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 working vessels on scene in accordance with this rule and the Rules of the Road (33 CFR subchapter E). Extensive notification of the safety zone to the maritime public will be made via maritime advisories to allow 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 proposed rule would 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 IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule has implications for federalism or Indian tribes, please contact the person

listed in the FOR FURTHER INFORMATION CONTACT section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a safety zone which is limited in size and duration. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary Record of Environmental Consideration supporting this determination is 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 proposed 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.

V. 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 shape the outcome of this rulemaking. 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 <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact 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 <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a

final rule is published.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact the person named in the FOR FURTHER INFORMATION CONTACT section, above.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.T05-0400, to read as follows:

§ 165.T05-0400 Safety Zone, Delaware River; Pipe-laying

(a) Location. The following areas are safety zones: includes all waters in Billingsport Range, on the Delaware River, within 150 yards of the working vessels and related equipment conducting pipe-removal operations.

(b) Definitions. (1) The Captain of the Port 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 his 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 a safety zone 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 zones created by this section. (1) The Captain of the Port will implement and terminate the safety zones once all pipelines have been removed and operations are completed. Notice of the implementation and the termination of the safety zone will be made in accordance with §165.7.

(2) Entry into, transiting, or anchoring within the safety zones is prohibited unless vessels obtain permission from the Captain of the Port (COTP) or make satisfactory passing arrangements, via VHF-FM marine band channel 13 or 16, with the working vessel on scene per this rule and the Rules of the Road (33 CFR subchapter E).

(3) To request permission to enter a 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 a 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.

(4) At least one side of the main navigational channel will be kept clear for safe passage of vessels in the vicinity of the safety zone. At no time will the main navigational channel be closed to vessel traffic. Vessels that desire to enter or transit through a safety zone shall contact the working vessels on scene on VHF-FM marine band channel 13 or 16, at least 1 hour prior to arrival.

(5) This section applies to all vessels that intend to transit through a safety zone

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 33 CFR 165.7.

Dated: June 20, 2017_____

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