



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2017-0947]**

**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 New Castle Range and Cherry Island Range on the Delaware River as well as the Christina River in order 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, dredge equipment, and associated pipeline. This regulation is necessary to provide for the safety of life on navigable waters of the Delaware River and the Christina 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] through January 10, 2018. For the purposes of enforcement, actual notice will be used from October 6, 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-2017-0947 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) 271-4814, email [Edmund.J.Ofalt@uscg.mil](mailto:Edmund.J.Ofalt@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	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 Sector Delaware Bay received the final details of the project on October 2, 2017 and dredging operations are scheduled to commence on October 6, 2017. It is impracticable

and contrary to the public interest to publish an NPRM to provide a notice and opportunity for comment period because we must establish these safety zones by October 6, 2017, to ensure the safety of life on navigable waters in the vicinity of dredging activity and protect mariners from the hazards associated with pipe-laying and dredging operations. Specific risks to safety include submerged and floating pipeline, dredge booster assemblies and the dredge itself which may be placed within or in close proximity to the navigational channel and Pea Patch Island Anchorage 5 on the Delaware River.

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 hazards presented to safety of life on the Delaware and Christina Rivers by the presence of dredge equipment and dredging operations.

### 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 (COTP) Delaware Bay has determined that potential hazards associated with dredging and pipe laying operations beginning on October 6, 2017, will be a safety concern for vessels attempting to transit the Delaware River, along New Castle Range, Cherry Island Range, and the Christina River. 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

This rule establishes safety zones on portions of the Delaware River and Christina River from October 6, 2017, through January 10, 2018, unless cancelled earlier by the COTP, to facilitate maintenance dredging being conducted in New Castle Range, Cherry Island Range and the Christina River. Maintenance dredging in the channel will be conducted with the cutter suction dredge ILLINOIS and associated pipeline. The pipeline will be a combination of floating hoses immediately behind the dredge connected to a 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 1 includes all waters within 150 yards of the dredge and all related dredge equipment. Entry into or transiting within safety zone 1 is prohibited unless vessels obtain permission from the Captain of the Port, via VHF-FM channel 16, or make satisfactory passing arrangements, via VHF-FM channels 07 or 13, with the dredge ILLINOIS per this section and the Rules of the Road (33 CFR subchapter E). 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 07 or 13, at least 1 hour, as well as 30 minutes, prior to arrival.

2) Safety zone 2 includes all the waters of Pea Patch Island Anchorage No. 5 found in 33 CFR 110.157(a)(6), where submerged pipeline(s) 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 anchor in Pea Patch Island Anchorage No. 5, during the enforcement of

safety zone 2, are required to obtain permission from the COTP prior to entry into the anchorage.

The COTP will terminate each safety zone individually once all submerged pipeline has been recovered and dredging operations are completed in each range respectively. Notice of the termination of each 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 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 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. Furthermore, vessels may be permitted to transit through the safety zone with the permission of the COTP or make satisfactory passing arrangements with

the dredge ILLINOIS in accordance with this rule and the Rules of the Road (33 CFR 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 (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 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 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 safety zones that encompass all navigable waters within 150 yards of a dredge, dredging pipeline and all dredge related equipment. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### 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.T05-0947, to read as follows:

**§ 165.T05-0947 Safety Zones, Delaware River; Dredging.**

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

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

(2) Safety zone 2. Safety zone 2 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.

(b) Definitions—(1) 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 safety zones described in paragraph (a) of this section.

(c) Regulations. The general safety zone regulations found in 33 CFR part 165

subpart C apply to the safety zones created by this section.

(1) Entry into or transiting within safety zone 1 is prohibited unless vessels obtain permission from the Captain of the Port, via VHF-FM channel 16, or make satisfactory passing arrangements, via VHF-FM channels 07 or 13, with the dredge ILLINOIS per this section and the Rules of the Road (33 CFR subchapter E). Vessels requesting to transit shall contact the dredge ILLINOIS on VHF-FM channel 07 or 13, at least 1 hour, as well as 30 minutes, prior to arrival.

(2) Entry into, transiting, or anchoring within safety zone 2 is prohibited unless vessels obtain permission from the Captain of the Port via VHF-FM channel 16.

(3) Vessels granted permission to enter and transit through the safety zone(s) must do so in accordance with any directions or orders of the Captain of the Port, his designated representative, or the dredge ILLINOIS as appropriate. No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port or the dredge ILLINOIS as applicable.

(4) At least one side of the main navigational channel will be kept clear for safe passage of vessels in the vicinity of safety zone 1. At no time will the main navigational channel be closed to vessel traffic.

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

(d) Enforcement period. This section is enforced from October 6, 2017, through January 10, 2018.

(1) Zone 1. Zone 1 will be enforced at all times during which the dredge ILLINOIS is conducting dredging operations in New Castle Range, Cherry Island Range, and the Christina River.

(2) Zone 2. Zone 2 will be enforced only during those times that dredge ILLINOIS is conducting dredging operations in New Castle Range.

(3) Notifications. The Captain of the Port will notify the maritime community of specific times and locations during which these safety zones will be enforced by providing advance notice via marine safety information bulletins, broadcast notice to mariners and local notice to mariners.

Dated: October 5, 2017

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