



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2015-1061]**

**RIN 1625-AA00**

**Safety Zone; Vigor Industrial Drydock Movement, West Duwamish Waterway; Seattle, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is establishing a safety zone in the West Duwamish Waterway in Seattle, Washington for scheduled drydock movements at Vigor Industrial. The safety zone is necessary to ensure the safety of the maritime public and workers involved in the drydock movements. The safety zone will prohibit any person or vessel from entering or remaining in the safety zone when a notice of enforcement is issued, unless authorized by the Captain of the Port or a Designated Representative.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER 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-2015-1061 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 Lieutenant Commander Christina Sullivan, Waterways Management Division, Sector Puget Sound, U.S. Coast Guard; telephone 206-217-6051, email 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
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard periodically receives notification from Vigor Industrial regarding their scheduled drydock movements in the West Duwamish Waterway, and has established temporary safety zones to ensure the safety of the maritime public during Vigor Industrial’s operations. The Coast Guard last published a temporary safety zone; Vigor Industrial Ferry Construction, West Duwamish Waterway, Seattle, WA on September 9, 2014 (79 FR 53297).

On November 16, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Vigor Industrial Drydock Movement, West Duwamish Waterway; Seattle, WA (81 FR 80621). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended January 17, 2017, we received no comments.

**III. Legal Authority and Need for Rule**

The Coast Guard is establishing this rule under authority in 33 U.S.C. 1231. Coast Guard Captains of the Port are granted authority to establish safety and security zones in 33 CFR 1.05-1(f) for safety and environmental purposes as described in 33 CFR part 165.

Due to the dangers involved with a large, slow moving drydock that will be maneuvering close to the shore, the Coast Guard is establishing a short term safety zone that is activated on a notice of enforcement to ensure the safety of the workers involved as well as the maritime public during Vigor Industrial's operations.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published November 16, 2016. There is one change in the regulatory text of this rule from the proposed rule in the NPRM.

We changed the proposed language in § 165.1340(b)(2) as follows: in the first sentence of paragraph (b)(2), the word "consult" is changed to "communicate." The second sentence of paragraph (b)(2) remains unchanged. This change is intended to clarify that consultation occurs once the Coast Guard receives sufficient information from Vigor Industrial and the Muckleshoot Tribe that there are impacts to treaty fishing activities.

This rule establishes a safety zone encompassing all waters in a rectangle approximately 450-yards-by-500-yards at the mouth of the West Duwamish Waterway as it empties into Elliot Bay in Seattle, Washington. The safety zone is adjacent to the north-eastern tip of Harbor Island in Seattle, WA, and will only be enforced after a notice of enforcement has been issued by the Captain of the Port, Sector Puget Sound. In addition to issuing a notice of enforcement to be published in the **Federal Register**, the Captain of the Port will use other appropriate means, such as Local Notice to Mariners and Special Marine Information Broadcast, to inform the public of enforcement periods.

To request permission to enter the zone during the times set out by the notice of enforcement, contact the Joint Harbor Operations Center at 206-217-6001 or the Vessel Traffic

Service Puget Sound on VHF Channel 14. If permission for entry is granted vessels will be required proceed at a minimum speed for navigation.

## **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 zone. This safety zone will impact a small designated area of the West Duwamish Waterway for less than 6 hours per occurrence. From 2005 through 2015, there were a total of 10 instances in which the Coast Guard issued a safety zone for the movement of the Vigor Dry Dock. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the 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 received no comments from the Small Business Administration on this rulemaking. 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 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 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.

This rule was determined to have potential tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will impact vessel traffic in the West Duwamish Waterway. The Coast Guard consulted with the Muckleshoot tribe on the NPRM that preceded this rule. In order to reach an agreeable timeframe that avoids impacts to treaty fishing activities, the Coast Guard will communicate with the Muckleshoot tribe and Vigor Industrial once it receives notification from Vigor Industrial concerning drydock movements that require the enforcement of the safety zone. If agreement is not reached, the Coast Guard, as a Federal trustee, will conduct consultation with the Muckleshoot tribe to ensure Vigor movements will avoid Treaty impacts.

If you believe this rule has additional 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 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 the establishment of a safety zone to ensure the safety of the maritime public. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. 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 record keeping 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 § 165.1340 to read as follows:

§ 165.1340 Safety Zone; Vigor Industrial Drydock Movement, West Duwamish Waterway; Seattle, WA.

(a) Location. The following area is a safety zone: All waters of the West Duwamish Waterway in Seattle, WA encompassed within the area created by connecting the following points: 47°35'04"N, 122°21'30"W thence westerly to 47°35'04"N, 122°21'50"W thence northerly to 47°35'19"N, 122°21'50"W thence easterly to 47°35'19"N, 122°21'30"W thence southerly to 47°35'04"N, 122°21'30"W.

(b) Regulations. (1) In accordance with the general regulations in subpart C of this part, when a notice of enforcement has been issued, no person may enter or remain in the safety zone created by this section unless authorized by the Captain of the Port or a Designated Representative. See subpart C of this part for additional safety zone information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting the Joint Harbor Operation Center at 206-217-6001 or the Vessel Traffic Service Puget Sound on VHF channel 14.

(2) In order to reach an agreeable timeframe that avoids impacts to treaty fishing activities, the Coast Guard will communicate with the Muckleshoot Tribe and Vigor Industrial once it receives notification from Vigor Industrial concerning drydock movements that require the enforcement of the safety zone. If agreement is not reached, the Coast Guard, as a federal trustee,

will conduct consultation with the Muckleshoot Tribe to ensure Vigor movements will avoid Treaty impacts.

(c) Enforcement periods. The safety zone described in paragraph (a) of this section will be enforced by the Captain of the Port only upon notice. Notice of enforcement by the Captain of the Port will be provided prior to execution of the drydock movement by all appropriate means, in accordance with § 165.7(a). Such means will include issuance of a notice of enforcement to be published in the **Federal Register**, Local Notice to Mariners, and Special Marine Information Broadcast.

L. A. Sturgis,

Captain, U.S. Coast Guard,

Captain of the Port Puget Sound.

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