



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0001]

RIN 1625-AA00

Safety Zone; Delaware River Rock Blasting, Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Coast Guard is establishing three temporary safety zones on the waters of the Delaware River in portions of Marcus Hook Range, Tinicum Range and Anchorage 7 off Marcus Hook Range. The safety zones will temporarily restrict vessel traffic from transiting or anchoring in portions of the Delaware River while rock blasting, dredging, and rock removal operations are being conducted to facilitate the Main Channel Deepening project, and annual maintenance project for the Delaware River. The safety zones are needed to protect personnel, vessels, and the marine environment from hazards created by rock blasting, dredging, and rock removal operations. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the COTP or his designated representatives.

DATES: This interim rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 15, 2020. For the purposes of enforcement, actual notice will be used from January 12, 2020, through

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0001 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

You may submit comments identified by docket number USCG-2020-0001 using the Federal eRulemaking Portal at <https://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 on this rule, call or email Petty Officer Edmund Ofalt, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271-4889, e-mail Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
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 interim 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 it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for blasting and dredging operations. The rule must be in force by January 12, 2020, to serve its purpose of ensuring the safety of the general public from hazards associated with rock blasting, dredging, and rock removal operations.

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 potential safety hazards associated with rock blasting, dredging, and rock removal operations in these locations.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the rule are necessary we will publish a subsequent rulemaking document in the Federal Register.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with the rock blasting and dredging operations. The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment

within the vicinity of rock blasting, dredging, and rock removal operations.

IV. Discussion of the Rule

This rule establishes three safety zones from January 12, 2020, through March 15, 2020. The safety zones are necessary to facilitate the main channel deepening and annual maintenance of the Delaware River from Marcus Hook Range to Tinicum Range, and Anchorage 7 off Marcus Hook Range (as described in 33 CFR 110.157(a)(8)). Rock drilling, hammering, removal, and dredging operations will most likely be conducted with the drill boat APACHE, dredge NEW YORK, and dredge ESSEX, though other dredges may be used, along with associated dredge pipeline and boosters. The pipeline consists of a combination of floating hoses immediately behind the dredge ESSEX and submerged pipeline leading to upland disposal areas. Due to the hazards related to rock drilling, hammering, removal, and dredging operations, the associated pipeline and the location of submerged pipeline, safety zones are being established in the following areas:

(1) Safety zone one includes all navigable waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27 and all related dredge equipment when the dredge is operating in New Castle Range, Marcus Hook Range, Deepwater Point Range, and Anchorage 7. This safety zone is being established for the duration of the maintenance project. Vessels requesting to transit the safety zone must contact the dredge on VHF channel 13 or 16 at least 1 hour prior to arrival to arrange safe passage. 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 entire main navigational channel be closed to vessel traffic. Vessels should avoid meetings in these areas where one side of the main

navigational channel is open and proceed per this rule and the Rules of the Road (33 CFR subchapter E).

(2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8). Vessels wishing to anchor in Anchorage 7 off Marcus Hook Range must obtain permission from the COTP at least 24 hours in advance by calling (215) 271-4807. The COTP will permit only one vessel to anchor at a time 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 by the COTP for the required inspection. Vessels are encouraged to use Anchorage 9 near the entrance to Mantua Creek, Anchorage 10 at Naval Base, Philadelphia, and Anchorage 6 off Deepwater Point Range as alternative anchorages.

(3) Safety zone three covers all navigable waters in the Delaware River within 500 yards of vessels and machinery being used to conduct rock blasting, dredging, and rock removal operations between Marcus Hook Range and Tinicum Range.

Entry into, transiting, or anchoring within safety zone one is prohibited unless vessels obtain permission from the COTP or make satisfactory passing arrangements with the operating dredge per this rule and the Rules of the Road (33 CFR subchapter E). Though the dredge ESSEX, and the dredge NEW YORK are the primary dredges to be used in these operations, the COTP may update the information and the dredges being utilized with these dredging operations via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Safety zone three will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonations are being conducted and shortly thereafter, when the channel is being surveyed to ensure the navigational channel is clear for vessels to transit. It is expected that these detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel will be open for vessels to transit. This rule describes communications for notifying waterway users of upcoming detonations and provides means for waterway users to request entry into the safety zone.

The COTP will activate and terminate the safety zones individually once all submerged pipeline has been recovered and dredging operations are completed in each respective area. Notice of the activation and the termination of the safety zones 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, duration, and traffic management of the safety zone. The safety zone will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonations are being conducted. It is anticipated that the blasting detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel will be open for vessels to transit. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic is limited during the times of detonation and Broadcast Notice to Mariners are made via VHF-FM marine channel 13 and 16 when blasting operations will occur.

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 transit through the safety zones with the permission of the COTP or make satisfactory passing arrangements with the dredge ESSEX, drill boat APACHE, dredge NEW YORK or other dredges that may be used in accordance with this rule and the Rules of the Road (33 CFR subchapter E). 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 call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule has 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 economically affects it.

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 call or email 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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 to protect waterway users that would prohibit entry within 500 yards of rock blasting, dredging, and rock removal conducted by the drill boat APACHE and the dredge NEW YORK, within 250 yards of the dredge ESSEX and associated equipment, and within Marcus Hook Anchorage (No. 7) without prior approval. Vessels can request permission to enter the safety zones. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

VI. 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 <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email 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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this interim final rule as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions.

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: 46 U.S.C. 70034, 70051; 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.T05-0001, to read as follows:

§ 165.T05-0001 Safety Zone, Delaware River Rock Blasting; Marcus Hook, PA

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

- (1) Safety zone one includes all waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27, as well as all related dredge equipment, while the dredge is operating in Marcus Hook Range. For enforcement purposes Marcus Hook Range includes all navigable waters of the Delaware River shoreline to shoreline, bound by a line drawn perpendicular to the center line of the channel at the farthest upriver point of the range to a line drawn perpendicular to the center line of the channel at the farthest downriver point of the range.

- (2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8) and depicted on U. S. Nautical Chart 12312.

- (3) Safety zone three includes all the navigable waters of the Delaware River within 500 yards of vessels and machinery performing rock blasting, rock removal, and dredging operations, between Marcus Hook Range and Tinicum Range.

- (b) Definitions. As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to assist with enforcement of the safety zone described in paragraph (a) of this

section.

(c) Regulations. (1) Entry into or transiting within the safety zone one is prohibited unless vessels obtain permission from the Captain of the Port via VHF-FM channel 16 or 215-271-4807, or make satisfactory passing arrangements via VHF-FM channel 13 or 16 with the operating dredge per this section and the rules of the Road (33 CFR subchapter E). Vessels requesting to transit shall contact the operating dredge via VHF-FM channel 13 or 16 at least 1 hour prior to arrival.

(2) Vessels desiring to anchor in safety zone two, Anchorage 7 off 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. 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.

(3) The operator of any vessel requesting to transit through safety zone three shall proceed as directed by the drill boat APACHE, the dredge TEXAS and NEW YORK, or the designated representative of the Captain of the Port and must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(4) No vessels may transit through safety zone three during times of explosive detonation. During explosive detonation, vessels will be required to maintain a 500 yard distance from the drill boat APACHE. The drill boat APACHE will make broadcasts, via VHF-FM Channel 13 and 16, at 15 minutes, 5 minutes, and 1 minute prior to detonation, as well as a countdown to detonation on VHF-FM Channel 16.

(4) After every explosive detonation a survey will be conducted by the dredging contractor to ensure the navigational channel is clear for vessels to transit. The drill boat APACHE will broadcast, via VHF-FM channel 13 and 16, when the survey has been completed and the channel is clear to transit. Vessels requesting to transit through the safety zone shall proceed as directed by the Captain of the Port and contact the drill boat APACHE on VHF-FM channel 13 to make safe passing arrangements.

(5) This section applies to all vessels except those engaged in the following operations: enforcement of laws, service of aids to navigation, and emergency response.

(d) Enforcement. The U.S. Coast Guard may be assisted by federal, state and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This rule will be enforced from January 12, 2020, through March 15, 2020, unless cancelled earlier by the Captain of the Port.

Dated: January 10, 2020

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

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