



DEPARTMENT OF HOMELAND SECURITY

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0639]**

**RIN 1625-AA00**

**Safety Zone; Narragansett Bay, Quonset, RI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule and request for comments.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters within a 1,700 foot radius of the barge M. J. VERROCHI located in Narragansett Bay, Quonset, RI. The safety zone is needed to protect personnel, vessels, and the marine environment from the potential hazards created by dredging operations that include drilling and blasting. When enforced, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Southeastern New England or designated representative.

**DATES:** *Effective date:* This rule is effective from December 30, 2020 through January 31, 2021.

*Comments due date:* Comments and related material must be received by the Coast Guard on or before [INSERT DATE 10 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-2020-0639 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-2020-0639 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation

and Request for Comments” portion for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email the Waterways Management Division, U.S. Coast Guard Sector Southeastern New England, telephone 401-435-2342, e-mail [SENEWWM@uscg.mil](mailto:SENEWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of Proposed Rule Making
§	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 it is impracticable. The Coast Guard did not receive sufficient details to evaluate the drilling and blasting in Narragansett Bay until November 23, 2020. It is impracticable to publish an NPRM because we must establish this safety zone by December 30, 2020, but lack sufficient time to collect public comments and to address them before issuing the rule.

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**. For reasons stated in the preceding paragraph, delaying the effective date of this rule would

be impracticable and contrary to the public interest because timely action is needed to respond to the potential safety hazards associated with the drill and blast project.

### **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 Captain of the Port (COTP) Sector Southeastern New England has determined that potential hazards exist with the loading of explosives, transit of explosives and storage of explosives on the barge M. J. VERROCHI during the drill and blast project. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

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

This rule establishes a safety zone from December 30, 2020 through January 31, 2021. The safety zone will cover all navigable waters within 1,700 feet of the barge M. J. VERROCHI used for dredging operations in Narragansett Bag near Quonset, RI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the barge M. J. VERROCHI conducts dredging operations that include drilling and blasting. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to; publication in the Local Notice to Mariners and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM) in advance of any enforcement.

### **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, it 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 time-of-year of the safety zone. This safety zone will restrict vessel traffic from entering or transiting in Narragansett Bay within 1,700 foot radius around the barge M. J. VERROCHI. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone, and vessel traffic will be able to seek permission from COTP to safely transit through 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 certifies under 5 U.S.C. 605(b) that this 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 V.A above, this rule will not have a significant 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 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 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.

### *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 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 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 the establishment of a safety zone on the navigable waters of Narragansett Bay, RI that will prohibit entry within a 1,700 foot radius of the barge M. J. VERROCHI. 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. 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 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.

## **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 <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 TIR 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.

### **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.T01-0639 to read as follows:

**§ 165.T01-0639 Safety Zone; Narragansett Bay, Quonset, RI**

(a) *Location.* The following area is a safety zone: All navigable waters from surface to bottom, within a 1,700 foot radius around the barge M. J. VERROCHI located in Narragansett Bay, Quonset, RI.

(b) *Enforcement Periods.* This section is enforceable 24 hours a day from December 30, 2020 through January 31, 2021, but will only be enforced when deemed necessary by the COTP Southeastern New England.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of U.S. Coast Guard Sector Southeastern New England.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 508-457-3211 or on VHF-FM channel 16.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notice to Mariners of any changes in the planned schedule.

Dated: December 15, 2020

C. J. Glander,  
Captain, U.S. Coast Guard,  
Captain of the Port Sector Southeastern New England.

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