DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0083]

RIN 1625-AA00

Safety Zone; Fincantieri Blasting Project; Menominee River, Menominee, MI and Marinette, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Menominee River in Marinette, WI within 1000 feet of a blasting area. This action is necessary to provide for the safety of life on these navigable waters during the daily blasting at the southern bank of the Menominee River near the Fincantieri Marinette Marine facility. This rulemaking will restrict usage by persons and vessels within the safety zone. At no time during the effective period may a vessel or person pass between the construction barges and southern bank of Menominee River. Also during the entire effective period, all vessels and persons are prohibited from transiting the safety zone at speeds that would create a wake. Additionally, during blasting operations, lasting approximately 15 minutes each evening, no vessel or persons may enter the safety zone. These restrictions would apply to all vessels and persons during the effective period unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 30, 2021. For the purposes of enforcement, actual notice will be used from May 10, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].
ADDRESS: To view documents mentioned in this preamble as being available in the docket, go to https://www.regulations.gov, type USCG-2021-0083 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 Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7148, email Jeromy.N.Sherrill@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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II. Background Information and Regulatory History

On February 26, 2021, Roen Salvage Company notified the Coast Guard that it will be conducting daily blasting operations beginning April 1, 2021 to November 30, 2021, for an approximate 15 minute period occurring between 3:30 p.m. to 5:30 p.m. in conjunction with a construction project. The blasting will take place on the southern bank of the Menominee River near the Fincantieri Marinette Marine facility. The Captain of the Port Lake Michigan (COTP) has determined that potential hazards associated with the blasting would be a safety concern for anyone within a 1000 foot radius of the blasting site. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 1000-foot radius of the blasting site before, during, and after the scheduled event.

In response, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled Safety Zone; Fincantieri Blasting Project; Menominee River, Menominee, MI and Marinette, WI (86 FR 12887). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this project. During the comment period that ended March 22, 2021, we received 00 comments opposed to the regulatory action.
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 because immediate action is needed to respond to the potential safety hazards associated with the daily blasting.

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 Lake Michigan (COTP) has determined that a safety zone would mitigate the potential hazards associated with the blasting project. The safety zone will last from May 10, 2021 to November 30, 2021 for an approximate 15 minute period occurring daily between 3:30 p.m. to 5:30 p.m. The safety zone will cover all navigable waters within 1000 foot radius of the blasting site which will be on the southern bank of the Menominee River at the Fincantieri Ship Yard in Marinette, WI. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the daily blasting event. No vessel or persons will be permitted to enter the safety zone during blasting operations. During non-blasting times, no vessel or persons will be permitted to transit the area at speeds that would create a wake. Additionally, no vessel or persons will be permitted to transit between the construction barges and the southern bank of the Menominee River. No vessel or persons will be allowed to conduct the three preceding activities without obtaining permission from the COTP Lake Michigan or a designated representative.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments opposed to our NPRM published on March 4, 2021. The only change in the regulatory text of this rule from the proposed rule is the delay in the project’s start date from April, 2021 to May 10, 2021. The delayed start date is due to operational delays with the construction company. The project end date is unchanged.

This rule establishes a safety zone lasting from May 10, 2021 to November 30, 2021 for an approximate 15 minute period occurring daily between 3:30 p.m. to 5:30 p.m. The safety zone...
will cover all navigable waters within 1000 foot radius of the blasting site which will be on the southern bank of the Menominee River at the Fincantieri Ship Yard in Marinette, WI. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the daily blasting event. No vessel or persons will be permitted to enter the safety zone during blasting operations. During non-blasting times, no vessel or persons will be permitted to transit the area at speeds that would create a wake. Additionally, no vessel or persons will be permitted to transit between the construction barges and the southern bank of the Menominee River. No vessel or persons will be allowed to conduct the three preceding activities without obtaining permission from the COTP Lake Michigan or a designated representative.

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. 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).

This regulatory action determination is based on the characteristics of the safety zone. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters. This rule will prohibit entry into certain navigable waters of the Menominee River in Marinette, WI, and it is not anticipated to exceed 15 minutes in duration each day. During non-blasting operations, vessels and persons will be allowed to enter the safety zone at speeds that do not create a wake. Additionally, the exclusion area between the construction barges and southern bank of the river is small and allows for plenty of space within
the channel for vessels to transit the area north of the construction barges. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels and persons may still transit through the safety zone when permitted by the COTP Lake Michigan.

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 00 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 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.

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.

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 a safety zone that would prohibit vessels and persons from passing through a small area located between the construction barges and the southern bank of the Menominee River, would prohibit entry into the all navigable waters within a 1000 foot radius of the construction barges for a maximum of 15 minutes per day during blasting activities, and would prohibit vessels and persons from transiting the safety zone at speeds that would create a wake. 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. 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.

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.T09-0083 to read as follows:

§ 165.T09-0035 Safety Zone; Blasting Project; Menominee River, Marinette, WI.

(a) Location. All navigable waters of the Menominee River within 1000 feet of the blast area on the southern bank of the river at coordinates 43.0705000°N, 086.2346667°.

(b) Enforcement period. The safety zone portion of the regulated area described in paragraph (a) is effective for 15 minutes between 3:30 p.m. and 5:30 p.m. each evening without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 30, 2021. For the purposes of enforcement, actual notice will be used from May 10, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The part of the safety zone between the construction barges and the southern bank of the river, and the no-wake zone portion of the regulated area described in paragraph (a) will be in effect continuously without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 30, 2021. For the purposes of enforcement, actual notice will be used from May 10, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) Regulations. (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zone is closed to all vessels and persons, except as may be permitted by the COTP or a designated representative.

(3) The “designated representative” of the COTP Lake Michigan is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone during
blasting operations, or at speeds that would create a wake, must contact the COTP Lake Michigan or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Lake Michigan or an on-scene representative.


D. P. Montoro,
Captain, U.S. Coast Guard,
Captain of the Port Lake Michigan.

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