



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0401]

RIN 1625-AA00

Safety Zone; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Delaware River within a 500-yard radius of the EX-USS NEW JERSEY during active dead ship tow operations from Philadelphia, PA to Paulsboro, NJ, and then to Camden, NJ. The temporary safety zone, which will only be enforced during active towing operations, is needed to protect personnel, vessels, and the marine environment from potential hazards created by the dead ship tow. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Delaware Bay (COTP).

DATES: This rule is effective from 12:01 a.m. May 29, 2024, through 11:59 p.m. June 30, 2024, but it will only be subject to enforcement during active dead ship tow operations.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0401 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MST1 Dylan Caikowski, Waterways Management U.S. Coast Guard; telephone 215-271-4814, email SecDelBayWWM@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 temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory 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.” 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 to publish an NPRM, consider comments, and publish a final rule by May 29, 2024, when the temporary safety zone will be needed.

Also, 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 there are fewer than 30 days remaining before the temporary safety zone must be in effect.

III. Legal Authority and Need for Rule

A dead ship tow evolution consists of a towing vessel(s) moving a ship that is not under its own command and not using its own propelling machinery. The COTP has determined that potential hazards associated with the EX-USS NEW JERSEY dead ship tow, such as the vessel having limited maneuverability, and having no main propulsion,

will be a safety concern for anyone within a 500-yard radius of the vessel during the towing operations. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the temporary safety zone while the vessel is being towed. The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034.

IV. Discussion of the Rule

This rule establishes a temporary safety zone which will be in effect from May 29, 2024, through June 30, 2024, but which will only be enforced during active dead ship tow operations. The temporary safety zone will cover all navigable waters within 500-yards of the EX-USS NEW JERSEY. The duration of the temporary safety zone, and the periods during which it will be enforced, have been and will be, respectively, tailored to protect personnel, vessels, and the marine environment in these navigable waters while tow operations are active to minimize impacts on other uses of the waterway to those which are necessary. No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the COTP 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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, the fact that

the temporary safety zone will only be enforced when protections are actually needed, and the location of the temporary safety zone. This rule will impact a 500-yard radius around the EX-USS NEW JERSEY, and only during active dead ship tow operations.

B. Impact on Small Entities

Because Coast Guard has determined that this final rule is exempt from notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action.

In the spirit of section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 temporary safety zone lasting from May 29, 2024, through June 30, 2024, that will prohibit entry within 500-yards of the EX-USS NEW JERSEY only during active dead

ship tow operations. 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, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-0401 to read as follows:

§ 165.T05-0401 Safety Zone; Delaware River, Philadelphia, PA.

(a) *Location.* The following area is a safety zone: All navigable waters on a section of the Delaware River between Philadelphia, PA and Camden, NJ, within 500-yards of the EX-USS NEW JERSEY, from surface to bottom.

(b) *Definitions.* As used in this section, *designated representative* means a Coast

Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a Federal, State, or local law enforcement vessel assisting the Captain of the Port, Sector Delaware Bay (COTP) in the enforcement of the safety zone.

(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.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF-FM channel 16 or via phone at or 215-271-4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period:* This section will be enforced during active dead ship tow operations, which will occur between 12:01 a.m., May 29, 2024, and 11:59 p.m., June 30, 2024. Notification of an enforcement period will be released via broadcast notice to mariners.

Dated: May 21, 2024.

Kate F. Higgins-Bloom,

Captain, U.S. Coast Guard,

Captain of the Port, Sector Delaware Bay.

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