

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165****[CGD01-02-064]****RIN 2115-AA97****Safety Zone; Portland Harbor, Oilrig Construction Project****AGENCY:** Coast Guard, DOT.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the waters of Portland Harbor within a one hundred (100) yard radius of a large oilrig under construction at the former Bath Iron Works (BIW) Pier 2. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the limited maneuverability of vessels working during this construction process, and the safety concerns associated with fastening together two sections of this large oilrig. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**EFFECTIVE DATE:** This rule is effective from June 3, 2002 until June 19, 2002.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine between 8 a.m. and 4 p.m. Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, at (207) 780-3251.

**SUPPLEMENTARY INFORMATION:****Regulatory History**

Under 5 U.S.C. 553(b)(3), we find that good cause exists for not publishing a notice of proposed rulemaking (NPRM) for this regulation. Due to the complex planning and coordination involved, final details of construction were not provided to the Coast Guard until May 20, 2002, leaving insufficient time to draft and publish a NPRM or to publish the rule 30 days prior to its effective date.

Under 5 U.S.C. 553(d)(3), we find that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this regulation would be contrary to the public interest since immediate action is needed to protect the maritime community from

the hazards associated with the limited maneuverability of vessels working during this construction process, and the safety concerns associated with fastening together two sections of this large oilrig. The barge L400 will be loaded with a large oilrig deck box (tower section). The barge L400 will have to be maneuvered between the columns of the pontoon section (hull) of the oilrig that will be ballasted down in the former dry-dock basin southeast of the former BIW Pier 2. A loaded barge of this size will have limited maneuverability, and will involve precise movements while positioning the barge between the columns of the pontoon section of the rig. There will be less than two feet of clearance between the barge and the pontoon columns.

**Background and Purpose**

Cianbro Corporation, of Pittsfield, Maine is completing construction of two large oilrigs known as Amethyst 4 and Amethyst 5. The work is being conducted at the former Bath Iron Works Shipyard in Portland, Maine. The first of these rigs has been transported to Portland, Maine in two sections from a shipyard in Pascagoula, Mississippi. The pontoon section, which is the hull of the oilrig, arrived in April 2002. It has been undergoing preparation work for mating with the larger deck box section, which is the tower of the oilrig, which arrived May 18, 2002.

The mating operation will be conducted in two phases. First, the pontoon section, measuring 250 by 180 feet, will be moved into the deep basin (formerly used by the BIW floating dry-dock) on June 3, 2002. Several vessels will be involved with properly mooring and anchoring the pontoons in the basin. Once in place, the pontoon section will be ballasted and partially submerged.

The second phase will involve placing the deck box of the oilrig, measuring 250 feet square, on top of the columns of the pontoon section. The barge L400, which is loaded with the deck box section, will be maneuvered between the columns of the pontoon section. This is expected to take place on June 5 or 6, 2002 and will take approximately four hours to complete. The deck box section will then be partially welded to the pontoon columns. The welding is expected to take approximately one to two weeks to complete.

Due to the precise movements necessary to complete this maneuver, the limited maneuverability of the barge while loaded with the deck box, the need of the barge to maneuver in the main channel for a short duration, and

the safety concerns while fastening the deck box to the columns of the pontoon section, this safety zone will be needed to ensure safety during all portions of this evolution. This safety zone covers all waters of Portland Harbor within a one hundred yard (100 yard) radius of the barge L400, the pontoon section of the oilrig Amethyst 4 (under construction), assist tugs and participating vessels during the movement of the pontoons and barge from the former Bath Iron Works Pier 2, Portland, Maine to the former dry-dock basin on the southeast edge of Pier 2, and during fastening of the deck box, loaded on the barge L400, to the pontoon section.

**Regulatory Evaluation**

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: the impact on the federal channel should only last for approximately four hours, there is ample room for vessels to navigate around the zone and broadcast notifications will be made to the local maritime community informing the public of the boundaries of the zone.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. For the reasons enumerated in the *Regulatory Evaluation* section above, this safety zone will not have a

significant economic impact on a substantial number of small entities.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard offered to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization or governmental jurisdiction would be affected by this rule, and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office Portland, Maine, at (207) 780-3251.

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 Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 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 action. In particular, the Act addresses actions that may require expenditure by a State, local or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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.

#### Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

#### Regulation

For the reasons set out 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(g), 6.04-1, 6.04-6 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01-064 to read as follows:

#### § 165.T01-064 Safety Zone; Portland Harbor, Oilrig Construction Project.

(a) *Location.* All waters of Portland Harbor within a one hundred yard (100 yard) radius of the barge L400, the pontoon section of the oilrig Amethyst 4 (under construction), assist tugs and participating vessels during the movement of the pontoons and barge from the former Bath Iron Works Pier 2, Portland, Maine to the former dry-dock basin on the southeast edge of Pier 2, and during fastening of the deck box, loaded on the barge L400, to the pontoon section.

(b) *Effective date.* This rule is effective from June 3, 2002 until June 19, 2002.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply. (2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene personnel. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Upon being hailed by U.S. Coast Guard personnel via siren, radio, flashing light, bullhorn or other means, the operator of the vessel shall proceed as directed.

Dated: May 29, 2002.

**M.P. O'Malley,**

*Commander, Coast Guard, Captain of the Port.*

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**BILLING CODE 4910-15-P**

### POSTAL SERVICE

#### 39 CFR Part 20

#### Changes in International Special Service Fees

**AGENCY:** Postal Service.

**ACTION:** Final rule.