

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[Docket No. USCG–2010–1098]****RIN 1625-AA00****Safety Zone; Potential Unexploded Ordnance, Pier 91, Seattle, WA****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone encompassing all waters within 100 yards of Pier 90/91 between terminal 89 and the Elliott Bay Marina Breakwater on Elliott Bay in Seattle, Washington. The safety zone is necessary to help ensure the safety of the maritime public due to discarded military munitions discovered in close proximity to Pier 91 and will do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective in the CFR on December 28, 2010 through April 15, 2011. This rule is effective with actual notice for purposes of enforcement starting at 12:01 a.m. on December 14, 2010. This rule will remain in effect through 11:59 p.m. on April 15, 2011, unless canceled sooner by the Captain of the Port.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1098 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–1098 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail LTJG Ashley Wanzer, Waterways Management Division, Coast Guard Sector Puget Sound; telephone 206–217–6175, e-mail [SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

The Coast Guard is issuing this temporary final 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 to do so would be contrary to public interest since immediate action is necessary to ensure the safety of the maritime public during the removal of these military munitions.

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** because to do otherwise would be contrary to public interest since immediate action is necessary to ensure the safety of the maritime public during the removal of these military munitions.

**Basis and Purpose**

From April to October 2010, the Port of Seattle discovered discarded military munitions while conducting required routine security dives around pier 90/91 prior to cruise ship arrivals. On eight occasions, divers discovered munitions that date back decades to when the facility was used by the military. Each time, after the items were removed, the Navy and/or Coast Guard determined there was no imminent threat for tenants, cruise terminal operations, and all other commercial vessel operations who utilize the facility. Port police continued to perform routine dives throughout the summer during cruise season.

The U.S. Army Corps of Engineers has designated Pier 90 and 91 as a Formerly Used Defense Site (FUDS) and has assumed responsibility for removal of discarded military munitions from this area.

**Discussion of Rule**

The safety zone created by this rule encompasses all waters within 100 yards of Pier 90/91 between terminal 89 and the Elliott Bay Marina Breakwater on Elliott Bay in Seattle, Washington. The safety zone can also be described as all waters shoreward of a line extending from Elliot Bay Marina Breakwater at 47–37.646N, 122–23.227W then southeasterly to 47–37.537N, 122–

23.015W then east to 47–37.537N, 122–22.767W then northeasterly to 47–37.611N, 122–22.678W. Entry into the safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port or designated representative.

The Army Corps of Engineers is authorized under the authority of the FUDS program to conduct site investigation and time-critical removal action of the submerged munitions at Piers 90 and 91. Therefore, authorized survey operations and contracted divers will be allowed to perform duties associated with the planned ammunition removal during the enforcement of this rule.

The safety zone will be enforced by U.S. Coast Guard personnel. The Captain of the Port may be assisted by other Federal, State, or local agencies as needed.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

This 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. The Coast Guard has made this finding based on the fact that the safety zone created by this rule is limited in time and duration. Also, maritime traffic can transit around the zone.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the safety zone during periods of enforcement.

The rule will not have a significant economic impact on a substantial number of small entities, however, because the safety zone created by the rule is limited in time and duration, and maritime traffic can transit around the zone.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

#### **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 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.

#### **Taking of Private Property**

This rule will not cause 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 sections 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.

#### **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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### **Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### **Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 is categorically excluded, under figure 2–1, paragraph (34)(g), of the Commandant Instruction from further environmental documentation. This rule involves the establishment of a safety zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination will be made available in the docket.

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

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3707; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T13–171 to read as follows:

#### **§ 165.T13–171 Safety Zone; Potential Unexploded Ordinance, Pier 91, Seattle, WA**

(a) *Location.* The following area is a safety zone: All waters shoreward of a line extending from Elliott Bay Marina Breakwater at 47–37.646N, 122–23.227W then southeasterly to 47–37.537N, 122–23.015W then east to 47–37.537N, 122–22.767W then

northeasterly to 47–37.611N, 122–22.678W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or designated representative. Designated representatives are Coast Guard personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created in this section is effective from 12:01 a.m. on December 14, 2010 until 11:59 p.m. on April 15, 2011 unless canceled sooner by the Captain of the Port.

Dated: December 10, 2010.

**S.J. Ferguson,**

*Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2010–32543 Filed 12–27–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2010–1082]

RIN 1625–AA00

#### Safety Zone; Allegheny River, Pittsburgh, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone extending the entire width of the river between mile markers 0.6 and 0.8 on the Allegheny River. The safety zone is needed to protect the public from the hazards associated with the First Night Pittsburgh fireworks display. Entry into, movement within, and departure from this Coast Guard safety zone, while it is activated and enforced, is prohibited, unless authorized by the Captain of the Port or a designated representative.

**DATES:** This rule is effective from 5:30 p.m. until 6:45 p.m. on December 31, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the

docket are part of docket USCG–2010–1082 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–1082 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Ensign Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412–644–5808, e-mail [Robyn.G.Hoskins@uscg.mil](mailto:Robyn.G.Hoskins@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final 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. Publishing a NPRM would be impracticable because immediate action is needed to protect the public due to the First Night Pittsburgh fireworks display that will occur in the city of Pittsburgh, PA.

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**. Publishing an NPRM and delaying its effective date would be impracticable based on the short notice received for the event and the short period that the safety zone will be in place. Immediate action is needed to provide safety and protection during the First Night Pittsburgh fireworks display that will occur in the city of Pittsburgh, PA.

##### Background and Purpose

The First Night Pittsburgh fireworks display is scheduled to take place on December 31, 2010, on the Allegheny River. A safety zone is needed to protect the public from the hazards associated with the fireworks display.

##### Discussion of Rule

The Coast Guard is establishing a temporary safety zone extending the entire width of the river between mile markers 0.6 and 0.8 on the Allegheny River. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule will be effective from 5:30 p.m. to 6:45 p.m. on December 31, 2010. The Captain of the Port Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### Regulatory Planning and Review

This 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.

This rule will be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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.