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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG-2018-0913]

RIN 1625-AA00

**Safety Zone; Delaware River, Dredging Operation Equipment Recovery, Marcus Hook Range, Chester, PA****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 250-yard radius of Great Lakes Dredge & Dock Company vessels and machinery conducting emergency diving and equipment removal operations in the Delaware River within Marcus Hook Range near Chester, Pennsylvania. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by broken equipment removal operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Delaware Bay or a designated representative.

**DATES:** This rule is effective without actual notice from November 19, 2018 through November 26, 2018. For the purposes of enforcement, actual notice will be used from November 26, 2018 through November 30, 2018. This rule may be withdrawn if the project is completed before the stated end date. This rule will be enforced continuously each day the rule is in effect.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0913 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 Petty Officer Thomas Welker, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone (215) 271-4814, email [Thomas.J.Welker@uscg.mil](mailto:Thomas.J.Welker@uscg.mil).

**SUPPLEMENTARY INFORMATION:****I. Table of Abbreviations**

CFR Code of Federal Regulations

COTP Captain of the Port  
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 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 and contrary to the public interest to do so. The rule must be established by November 18, 2018, to serve its purpose of providing safety during the recovery of a broken hydro-hammer associated with dredging operations. The Coast Guard was notified of the recovery operation schedule on November 18, 2018, and a safety zone must be established by November 18, 2018 to address the hazards associated with diving and equipment removal operations.

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 and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with diving and equipment removal operations.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with emergency diving and equipment recovery operations beginning November 19, 2018, will be a safety concern for anyone within a 250-yard radius of diving and equipment recovery vessels and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operations to recover the broken hydro-hammer are being conducted.

**IV. Discussion of the Rule**

This rule establishes a temporary safety zone on November 19, 2018 through November 30, 2018, within 250 yards of vessels and machinery being used by personnel to conduct diving and equipment recovery operations, at approximately 39°49.3002' N Latitude, -75°22.8966' W Longitude, in the Marcus Hook Range of the Delaware River. During diving and equipment recovery operations, persons or vessels will not be permitted to enter the safety zone without obtaining permission from the COTP or the COTP's designated representative. Vessels wishing to transit the safety zone in the clear side of the main navigational channel may do so if they can make satisfactory passing arrangements with dredge NEW YORK or tug INDIAN DAWN in accordance with the Navigational Rules in 33 CFR subchapter E via VHF-FM 88 at least 1 hour prior to arrival and at 30 minutes prior to arrival to arrange safe passage. If vessels are unable to make satisfactory passing arrangements with the dredge NEW YORK or tug INDIAN DAWN, they may request permission from the COTP, or his designated representative, to enter and transit the safety zone on VHF-FM channel 16. All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake while transiting the safety zone. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 and Marine Safety Information Bulletin further defining specific work locations and traffic patterns.

**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, this rule 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-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Delaware River. Although persons and vessels may not enter the safety zone without authorization from the COTP or a designated representative of the COTP, they may operate in the surrounding area during the enforcement period. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 and Marine Safety Information Bulletin about the zone, and the rule would allow vessels to seek permission to enter 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 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 (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 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 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

#### 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 and Commandant Instruction M16475.1D, 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 an emergency safety zone that will prohibit persons and vessels from entering a limited area on the navigable water in the Delaware Bay, during an emergency diving and equipment recovery operation. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01.

#### 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.

#### 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:** 33 U.S.C. 1231; 50 U.S.C. 191; 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.T05–0913 to read as follows:

#### § 165.T05–0913 Safety Zone; Delaware River, Dredging Operation Equipment Recovery, Mantua Creek Anchorage.

(a) *Location.* The following area is a safety zone: All navigable waters within 250 yards of vessels and machinery associated with diving and pipeline removal operating on the Delaware River, at approximately 39°49.3002′ N Latitude, 075°22.8966′ W Longitude, in the Marcus Hook Range near Chester, Pennsylvania. All coordinates are based on Datum NAD 1983.

(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 Delaware Bay (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Entry into or transiting within the safety zone is prohibited unless vessels obtain permission from the Captain of the Port via VHF-FM channel 16, or make satisfactory passing arrangements via VHF-FM channel 88, with the dredge NEW YORK or tug INDIAN DAWN per this section and the Rules of the Road (33 CFR chapter I, subchapter E). Vessels requesting to transit shall contact the dredge NEW YORK or tug INDIAN DAWN on channel 88 at least 1 hour prior to arrival and at 30 minutes prior to arrival.

(2) Vessels granted permission to enter and transit the safety zone must do so in accordance with any directions or orders of the Captain of the Port, his designated representative, dredge NEW YORK, or tug INDIAN DAWN. No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port, dredge NEW YORK, or tug INDIAN DAWN.

(3) All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(4) This section applies to all vessels that intend to transit through the safety zone except vessels that are engaged in the following operations: Enforcement of laws, service of aids to navigation, and emergency response.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced continuously from November 19, 2018 through November 30, 2018, or completion of the equipment removal, whichever is sooner.

Dated: November 19, 2018.

**S.E. Anderson,**

*Captain, U.S. Coast Guard Captain of the Port Delaware Bay.*

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## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 384

[Docket No. 17-CRB-0001-BER (2019-2023)]

#### Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments (Business Establishments III)

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges (Judges) publish final regulations setting rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period January 1, 2019, through December 31, 2023.

**DATES:** *Effective date:* January 1, 2019.

**ADDRESSES:** For access to the docket to read submitted background documents go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 17-CRB-0001-BER (2019-2023).

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Specialist, by telephone at (202) 707-7658 or email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act, Public Law 104-39, which created an exclusive right, subject to certain limitations, for copyright owners of sound recordings to perform publicly those sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of the section 114 statutory license was expanded in 1998 upon the passage of the Digital Millennium Copyright Act of 1998 (DMCA), Public Law 105-34. The DMCA created, *inter alia*, a statutory license for the making of an "ephemeral recording" of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license, among other things, allows entities that transmit performances of sound recordings to business establishments to make an ephemeral recording of a sound recording for later transmission, pursuant to the

limitations set forth in section 114(d)(1)(C)(iv).

Chapter 8 of the Copyright Act requires the Judges to conduct proceedings every five years to determine the royalty rates and terms for "the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv)." 17 U.S.C. 801(b)(1), 804(b)(2). Accordingly, the Judges published a notice commencing the current proceeding and requesting that interested parties submit petitions to participate. 82 FR 143 (Jan. 3, 2017).

The Judges received Petitions to Participate from Mood Media Corporation, Music Choice, David Powell, David Rahn,<sup>1</sup> Rockbot, Inc.,<sup>2</sup> Sirius XM Radio Inc., and SoundExchange, Inc. The Judges initiated the three-month negotiation period and directed the participants to submit written direct statements no later than May 14, 2018.

On May 4, 2018, the Judges received a joint *Motion to Adopt Settlement* from Mr. Rahn, Mood Media Corp., Music Choice, Sirius XM Radio Inc., and SoundExchange, Inc., (Moving Parties) stating that they had reached a settlement obviating the need for written evidentiary statements or a hearing.<sup>3</sup>

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Judges for approval. The Judges must provide "an opportunity to comment on the agreement" to participants and non-participants in the rate proceeding who "would be bound by the terms, rates, or other determination set by any

<sup>1</sup> In his Petition to Participate, Mr. Rahn identified himself as a shareholder in SBR Creative Media, Inc. and its subsidiary CustomerChannels.net, LLC.

<sup>2</sup> Rockbot withdrew its Petition to Participate on January 11, 2018.

<sup>3</sup> According to the Motion, David Powell, although having filed a Petition to Participate, did not otherwise participate in the proceeding. *Motion* at 2. The Moving Parties represent that counsel for Mood Media attempted unsuccessfully to contact Mr. Powell to discuss the filing of the Motion. *Id.* at 2-3. Mr. Powell also did not respond to the request for comments on the proposed regulations. On May 14, 2018, shortly before the proposed regulations were published, however, Mr. Powell filed a "Verified Motion for Enlargement of Time, and Agreed with Settlement Parties to Adopt Settlement Ex-Parte," which the Judges accept as a notice that Mr. Powell does not object to the settlement. The Judges make no finding with regard to Mr. Powell's eligibility to participate in this proceeding. To the extent Mr. Powell has an interest in the business establishment services license, he will be bound by the royalty rates and terms the Judges adopt.