



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2014-1037]

RIN 1625-AA00

Safety Zone: Eastport Breakwater Terminal, Eastport, Maine

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters around the Eastport Breakwater Terminal in Eastport, Maine. This safety zone is intended to restrict vessels from approaching within 100 yards of the eastern face of the Eastport Breakwater Terminal without authorization from the Captain of the Port (COTP), Sector Northern New England. This action is necessary due to the uncertainty regarding the breakwater's strength following a partial collapse of the structure on December 4, 2014.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until January 30, 2017. For the purposes of enforcement, actual notice will be used from the date the rule was signed,

December 12, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2014-1037 and are available online by going to <http://www.regulations.gov>, inserting USCG-2014-1037 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 LT David Bourbeau at Sector Northern New England; telephone (207)347-5015, e-mail David.T.Bourbeau@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202)366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Register
DHS	Department of Homeland Security
FR	Federal Register
USC	United States Code
USCG	United States Coast Guard

A. Regulatory Information and 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 publishing an NPRM would be impracticable and contrary to the public interest. Because of the emergency nature of the incident that created the need for this safety zone, there is insufficient time for the Coast Guard to seek public comments. Publishing an NPRM and delaying the effective date of this rule to await public comments would inhibit the Coast Guard's ability to fulfill its statutory missions to protect ports, waterways, and the maritime public.

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 for the

reasons discussed above. For the same reasons discussed in the preceding paragraph, the Coast Guard finds that waiting 30 days to make this rule effective would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1226, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

On December 4, 2014, the southwest portion of the Eastport Breakwater Terminal collapsed into the protected harbor shoreward of the Breakwater in Eastport, Maine. The catastrophic collapse resulted in several vessels being damaged or destroyed, and left the remaining breakwater structure at risk of further collapse. This safety zone is being established based on the analysis of an independent engineering firm that determined the remaining portion of the breakwater does not have the required lateral strength, nor is it designed to hold the weight of the current forces thrust upon it. The remaining portion of the breakwater could collapse without warning. The COTP has determined that a safety zone is necessary to protect the public from

the safety hazards created by this emergency.

C. Discussion of Rule

For the reasons discussed above, the COTP is establishing a temporary safety zone in Eastport Harbor, ME. The safety zone will be bound inside an area within 4 points along the breakwater at 44°54'26"N, 066°59'00"W, 44°54'25"N, 066°58'54"W, 44°54'19"N, 066°58'55"W, 44°54'19"N, 066°59'01"W. No vessel may enter, transit, moor, or anchor within this safety zone during the period of enforcement unless authorized by the COTP or designated representative.

The COTP will cause public notifications to be made by all appropriate means including but not limited to Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be relatively short in duration and it covers only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterway outside of the safety zone. Moreover, vessels desiring entry into the safety zone may be authorized to do so by the COTP or designated representative. Advanced public notifications will also be made to the local maritime community by Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 persons.

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 may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit in the vicinity of the Eastport Breakwater. This temporary safety zone will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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 will 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, above.

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.

4. 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).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. 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.

7. 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. Protection of Children from Environmental Health Risks from Environmental Health Risks

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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 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 establishment of a safety zone and thus, is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. Under figure 2-1, paragraph (34)(g), of the Instruction, an environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any

comments or information that may lead to the discovery of a significant environmental impact from this rule.

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; 46 U.S.C. Chapter 701, 3306, 3703; 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.T01-1037 to read as follows:

§ 165.T01-1037 Safety Zone: Eastport Breakwater Terminal, Eastport, Maine.

(a) Location. The following area is a safety zone: All navigable waters, from surface to bottom, within the following position(s) 44°54'26"N, 066°59'00"W, 44°54'25"N, 066°58'54"W, 44°54'19"N, 066°58'55"W, 44°54'19"N, 066°59'01"W, (NAD). Friar Roads, Eastport, Maine. All positions are approximate.

(b) Enforcement period. This rule will be enforced from

3:00 p.m. on December 11, 2014 to 11:59 p.m. January 30, 2017.

(c) Notification. Coast Guard Sector Northern New England will give actual notice to mariners for the purpose of enforcement of this temporary safety zone. Also, Sector Northern New England will notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this safety zone.

(d) Regulations. (1) The general regulations contained in §165.23 apply.

(2) In accordance with the general regulations in §165.23, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(3) The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The designated representative may be on board a Coast Guard vessel, or on board a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(4) Upon being hailed by a U.S. Coast Guard vessel or his designated representatives by siren, radio, flashing light or other means, the operator of the vessel shall

proceed as directed.

(5) Vessel operators desiring to enter or operate within this safety zone shall contact the Captain of the Port or his designated representatives via VHF channel 16 to obtain permission to do so.

Dated: December 12, 2014.

B. S. Gilda,
Captain, U.S. Coast Guard,
Captain of the Port, Northern New England.

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