



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0809]

RIN 1625-AA00

Safety Zone, Atlantic Intracoastal Waterway; Oak Island, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Atlantic Intracoastal Waterway near Oak Island, North Carolina. This action is necessary to provide the safety of mariners on navigable waters due to the transfer of power cables across the Atlantic Intracoastal Waterway. Entry into or movement within the safety zone during the enforcement period is prohibited without approval of the Captain of the Port.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until October 20, 2015. For the purposes of enforcement, actual notice will be used from October 12, 2015 until [INSERT DATE OF PUBLICATION IN

THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2015-0809]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 rule, call or e-mail LT Derek J. Burrill, Waterways Management Division Chief, Sector North Carolina, Coast Guard; telephone (910) 772-2230, e-mail Derek.J.Burrill@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History 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 final project details were not submitted to the Coast Guard until September 4, 2015. As such, it's impractical to provide a full comment period due to lack of time. Delaying the effective date for comment would be contrary to the public interest, since immediate action is needed to ensure protection of persons and vessels transiting the area.

For similar reasons, 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. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment. Therefore, a 30-day notice is impracticable. The Coast Guard will provide advance notifications to users via marine information broadcasts and local notice to mariners.

B. Basis and Purpose

The legal basis for this rule is 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; and DHS Delegation No. 0170.1. Under these authorities the Coast Guard may establish a safety zone in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

On October 12, 13, 19, and 20, 2015 Coastal Power will be installing power cables that will run across the Atlantic Intracoastal Waterway at latitude 33°55'11" N, longitude 078°03'24" W in Oak Island, North Carolina. To facilitate the safety of mariners and the public, the U.S Coast Guard will require temporary closures of the channel on October 12, 13, 19, 20, 2015.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Atlantic Intracoastal Waterway within a 100 yard radius of latitude 33°55'11" N, longitude 078°03'24" W in Oak Island, North Carolina. This safety zone will be established in the interest of public safety due to the transfer of power cables across the Atlantic Intracoastal Waterway. The regulated area for this safety zone includes all the water of the

Atlantic Intracoastal Waterway within a 100 yard radius of latitude 33°55'11" N, longitude 078°03'24" W, a position located north of the Oak Island Fixed Bridge in Oak Island, North Carolina. This rule will be enforced on October 12, 13, 19, 20, 2015 during the times of 09:00 AM to 12:00 PM and 01:00 PM to 04:00 PM. Vessels authorized by the Captain of the Port or his/her Representative to enter or remain in the safety zone during the above listed time frame must have a height clearance of 30 feet and greater and are required to notify on scene Coastal Power and Electric work boats at a minimum of 40 minutes prior to transiting the area on VHF marine radio channels 13 or 16 or via phone at 910-512-1645.

Except for vessels authorized by the Captain of the Port or his/her Representative, no person or vessel may enter or remain in the safety zone during the time frame listed. The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

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 primary impact of these regulations will be on limiting all vessels wishing to transit the affected waterways during enforcement of the safety zone on the Atlantic Intracoastal Waterway within a 100 yard radius of latitude 33°55'11" N, longitude 078°03'24" W in Oak Island, North Carolina on October 12, 13, 19, and 20, 2015. Although these regulations prevent traffic from transiting a portion of the Atlantic Intracoastal Waterway during this incident, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

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. 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 might be small entities: the owners or operators of vessels intending to transit or anchor in waters of the Atlantic Intracoastal Waterway within a 100 yard radius of latitude 33°55'11" N, longitude 078°03'24" W position during the outlined timeframe.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) the safety zone will only be in place for a limited duration, and (ii) before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

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 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, 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 will not call for a 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 INTFORMATION 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 an 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

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 the establishment of a safety zone to protect life, property and the environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. 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; 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.T05-809 to read as follows:

§165.T05-809 Safety Zone, Atlantic Intracoastal Waterway; Oak Island, North Carolina.

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone: specified waters of the Captain of the Port Sector North Carolina zone, as defined in 33 CFR 3.25-10, all waters of the Atlantic Intracoastal Waterway within a 100 yard radius of latitude 33°55'11" N, longitude 078°03'24" W in Oak Island, North Carolina.

(c) Regulations. (1) In accordance with the general regulations in §165.23, entry into this zone is prohibited unless authorized by the Captain of the Port, North Carolina or his

designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) [Reserved]

(3) The Captain of the Port, North Carolina can be reached through the Sector North Carolina Command Duty Officer at Sector North Carolina in Wilmington, North Carolina at telephone number (910) 343-3882.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement period. This section will be enforced on October 12, 13, 19, and 20, 2015, between 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m.

Dated: September 23, 2015.

S. R. Murtagh,
Captain, U.S. Coast Guard,
Captain of the Port North Carolina.

[FR Doc. 2015-26193 Filed: 10/14/2015 08:45 am; Publication Date:

10/15/2015]