



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0963]**

**RIN 1625-AA00**

**Safety Zone; Morro Bay Harbor Entrance; Morro Bay, California**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The U.S. Coast Guard is establishing a temporary safety zone in the navigable waters of the Morro Bay Harbor Entrance. This temporary safety zone is being established to reduce significant hazards subject to the vessels, the harbor, and the public during periods of poor weather conditions. Entry of persons or vessels into this temporary safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP), Los Angeles - Long Beach, or her designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. on March 15, 2020. For purposes of enforcement, actual notice will be used from 12:01 a.m. on January 15, 2020 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The safety zone will be enforced when the COTP or her designated representative deems it necessary because of hazardous, breaking, or rough bar conditions, which will be broadcasted via local Broadcast Notice to Mariners.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2019-0963 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 about this rulemaking, call or email the Waterways Management Branch, U.S. Coast Guard Sector Los Angeles – Long Beach; telephone (310) 521-3860, e-mail D11-SMB-SectorLALB-WWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
LLNR	Light List Number
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	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. Publishing an NPRM and responding to comments would be impracticable in this case due to the short notice of the severe weather predictions that may affect the Morro Bay Harbor Entrance beginning on or around January 15th, 2020.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**, as delaying the effective date of this rule would be impracticable because the weather conditions are expected to begin on or around January 15th, 2020 and we need to have this rule in place to protect vessels and persons transiting the area.

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

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port (COTP), Los Angeles - Long Beach has determined that potential hazards exist during certain weather conditions from January, 2020 to March, 2020, for all recreational and commercial vessels operating in the vicinity of the Morro Bay Harbor Entrance. This temporary safety zone is necessary to ensure the safety of, and reduce the risk to, the persons and vessels that operate on and in the vicinity of the Morro Bay Harbor Entrance.

### **IV. Discussion of the Rule**

This rule establishes a temporary safety zone from January 15th, 2020 through March 15th, 2020, encompassing all navigable waters from the surface to the sea floor near the inside and outside of the mouth of the Morro Bay Harbor entrance; within the following coordinates, in approximate position: from a point on the shoreline at 35°22.181'N 120°52.207'W, thence westward to 35°22.181'N 120°52.538'W, thence southward to 35°21.367'N 120°52.538'W, thence eastward to a point on the shoreline at 35°21.366'N 120°51.717'W, thence northward along the shoreline to a point inside the Morro Bay Harbor to 35°22.153'N 120°51.698'W, thence northwestward to a point on land at 35°22.233'N 120°51.847'W, thence southward along the

shoreline to the beginning. These coordinates are based on North American Datum of 1983. The Coast Guard will turn on the Morro Bay Rough Bar Warning Light (LLNR 3877; 35°22.256'N 120°51.526'W) to signify to mariners that rough bar conditions are taking place at the entrance. No vessel or person would be permitted to operate in the safety zone without obtaining permission from the COTP or her designated representative. The safety zone will only be enforced when the COTP or her designated representative deems it necessary because of the rough bar conditions, and enforcement will cease immediately upon conditions returning to safe levels. Sector Los Angeles – Long Beach may be contacted on VHF–FM Channel 16 or (310) 521-3801. The general boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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 including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be

prudently managed and controlled through a budgeting process.”

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of Morro Bay Harbor, CA, as required, for approximately 2 months and during a time of year when vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows 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 E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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 Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 establishment of a temporary safety zone, limited in duration, when required by significant safety hazards. This rule is categorically excluded from further review under paragraph L60(c) of Section L of the Department of Homeland Security Instruction Manual 023-01-001-01 (series). An environmental analysis checklist supporting this determination and Record of Environmental Consideration (REC) are 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.

#### 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: 46 U.S.C. 70034, 70051; 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.T11-015 to read as follows:

**§ 165.T11-015 Safety Zone; Morro Bay Harbor Entrance; Morro Bay, California.**

(a) Location. The following area is a safety zone: All navigable waters from the surface to the sea floor near the inside and outside of the mouth of the Morro Bay Harbor entrance; within the following coordinates, in approximate position: from a point on the shoreline at 35°22.181'N 120°52.207'W, thence westward to 35°22.181'N 120°52.538'W, thence southward to 35°21.367'N 120°52.538'W, thence eastward to a point on the shoreline at 35°21.366'N 120°51.717'W, thence northward along the shoreline to a point inside the Morro Bay Harbor to 35°22.153'N 120°51.698'W, thence northwestward to a point on land at 35°22.233'N 120°51.847'W, thence southward along the shoreline to the beginning. This coordinate is based on North American Datum of 1983.

(b) Definitions. For the purposes of this section:

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, hail Coast Guard Sector Los Angeles – Long Beach on VHF–FM Channel 16 or call at (310) 521-3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This section will be enforced from 12:01 a.m. January 15, 2020, to 11:59 p.m. March 15, 2020. The Coast Guard will turn on the Morro Bay Rough Bar Warning Light (Light List Number (LLNR) 3877; 35°22.256'N 120°51.526'W) to signify to mariners that rough bar conditions are taking place at the entrance. No vessel or person would be permitted to operate in the safety zone without obtaining permission from the COTP or her designated representative. The safety zone will only be enforced when the COTP or her designated representative deems it necessary because of the rough bar conditions, and enforcement will cease immediately upon conditions returning to safe levels. General boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

Dated: January 7, 2020.

R. E. Ore,  
Captain, U.S. Coast Guard,  
Acting Captain of the Port, Los Angeles – Long Beach.

[FR Doc. 2020-00375 Filed: 1/15/2020 8:45 am; Publication Date: 1/16/2020]