



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; change in effective period.

SUMMARY: The Coast Guard is extending the effective period of a safety zone in the vicinity of the Eastport Breakwater Terminal, Eastport, Maine. This safety zone was established on January 9, 2015 (80 FR 1344). This rule will extend the effective period of the existing temporary final rule from January 30, 2017 until October 1, 2017. This rule will continue 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 safety zone continues to be necessary due to the ongoing repairs to the breakwater 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 October 1, 2017. For the purposes of enforcement, actual notice will be used from the date the rule was signed, January 17, 2017, until [INSERT DATE OF PUBLICATION IN THE FEDERAL

REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2014-1037 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 e-mail MSTC Chris Bains at Sector Northern New England; telephone (207) 347-5003, e-mail Chris.D.Bains@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Register
COTP	Captain of the Port
DHS	Department of Homeland Security
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule
USC	United States Code
USCG	United States Coast Guard

II. Background Information and Regulatory History

On January 9, 2015 we published a TFR entitled “Safety Zone: Eastport Breakwater Terminal, Eastport, Maine” in the Federal Register (80 FR 1344). The effective period for this rule was from December 12, 2014 until on January 30, 2017. The Coast Guard is now extending the effective period of the safety zone in the vicinity of the Eastport Breakwater Terminal, Eastport, Maine until October 1, 2017.

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 NPRM with respect to this rule because publishing an NPRM would be impracticable and contrary to the public interest. The construction company was late in requesting an extension of the safety zone beyond the original construction completion date of January 30, 2017. As a result, the delay inherent in the NPRM process is contrary to the public interest and impracticable, as immediate action is needed to extend this safety zone in order to protect ports, waterways, and the maritime public.

We are issuing this rule, and 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.

III. Legal Authority and Need for Rule

The legal basis for the temporary rule is 33 U.S.C. 1231. 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 was established based on the analysis of an independent engineering firm that determined the remaining portion of the breakwater did not have the required lateral strength, nor was it designed to hold the weight of the forces thrust upon it. As a result, the remaining portion of the breakwater could have collapsed without warning. The COTP determined that a safety zone was

necessary to protect the public from the safety hazards created by this emergency and the construction of a replacement breakwater.

In January 2015, contractors began working of the construction of a replacement breakwater. The COTP has determined that potential hazards associated with emergency repairs to the breakwater continue to be a safety concern. Construction of the replacement breakwater was originally scheduled to be completed by January 30, 2017. Significant delays in construction have resulted in an anticipated completion date in August 2017. To ensure the continued protection of personnel, vessels, and the marine environment in the navigable waters within the safety zone, the Coast Guard is extending the effective period of the safety zone in the vicinity of the Eastport Breakwater Terminal to October 1, 2017.

IV. Discussion of Rule

For the reasons discussed above, the COTP is extending the period of 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 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.

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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

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. 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.

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 (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 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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 the extension of the effective period of a safety zone for ten months. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination 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: 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.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) Effective Period. This rule is effective and enforced from 3:00 p.m. on January 30, 2017 to 11:59 p.m. October 1, 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 33 CFR 165.23 apply.

(2) In accordance with the general regulations in §165.23 of this part, 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: January 17, 2017

M. A. BAROODY
Captain, U.S. Coast Guard
Captain of the Port, Northern New England
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