

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

[Docket Number USCG–2012–1060]

RIN 1625–AA00

**Safety Zone for Recovery Operations for East Jefferson Street Train Derailment, Mantua Creek; Paulsboro, NJ****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone one mile north and one mile south of the East Jefferson Street Railroad Bridge, Mantua Creek, Paulsboro, New Jersey, due to a train derailment resulting in the release of hazardous materials into Mantua Creek and the surrounding air. This regulation is necessary to provide for the safety of life on the navigable waters of the Mantua Creek. This safety zone is intended to restrict vessel traffic movement to protect mariners from the hazards associated with an ongoing recovery operation to remove the derailed train cars and address hazardous material release.

**DATES:** This rule is effective in the CFR from December 18, 2012 January 15, 2013. This rule is effective with actual notice from December 5, 2012 until December 18, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2012–1060. 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 email If you have questions on this temporary rule, call or email Lieutenant Corrina Ott, U.S. Coast Guard, Sector Delaware Bay, Chief of Waterways Management Division, Coast Guard; telephone 215–271–4902, email [Corrina.ott@uscg.mil](mailto:Corrina.ott@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V.

Wright, 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 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 it would be impracticable. Immediate action is necessary to protect the maritime public. The East Jefferson Street Rail Bridge train derailment occurred November 30, 2012 and hazardous material response and railcar recovery began immediately, thereby making it impractical to provide for a notice and comment period. Vessels transiting or attempting to transit Mantua Creek near the response operations may be at risk from possible hazardous material exposure.

For the reasons stated above, 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**. Any delay encountered in this regulation’s effective date would be contrary to public interest because immediate action is needed to provide for the safety of life and property from the hazards associated with the recovery operation and hazardous material release.

**B. Basis and Purpose**

On the morning of November 30, 2012 a train derailed and a portion of the East Jefferson Street Rail Bridge located in Paulsboro, New Jersey collapsed. Additionally a release of hazardous material from the derailed train cars occurred. Train cars currently lie partially submerged in Mantua Creek in the immediate vicinity of the rail bridge. A safety zone is necessary because there will be an ongoing operation to remove the submerged train cars and hazardous materials from November 30, 2012 until completed.

**C. Discussion of the Final Rule**

The Coast Guard Captain of the Port Delaware Bay is establishing a temporary safety zone from on December 5, 2012 until all recovery operations are completed unless cancelled earlier by the Captain of the Port. The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

The boundary line for the temporary safety zone includes all waters of Mantua Creek one mile north of and one mile south of the East Jefferson Street Rail Bridge in Paulsboro, New Jersey.

Vessels will not be permitted to transit through the safety zone unless they receive authorization from the Captain of the Port Delaware Bay or her representative. Such requests must be made one hour prior to the intended transit of the Safety Zone. Vessels may contact the Captain of the Port Delaware Bay or her representative in order to obtain authorization by contacting Coast Guard Sector Delaware Bay at: (215) 271–4940. After evaluating the current conditions and status of recovery operation of the derailed and damaged train cars, the Captain of the Port Delaware Bay or her representative will notify the requesting vessel whether they are authorized to transit through the Safety Zone and will provide any other directions for their intended transit.

The Captain of the Port will cancel this safety zone once all recovery operations are completed and hazards are removed from the area. At such time, notice that the safety zone is no longer established will be broadcast 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 or 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. Although this regulation will

restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to transit through the safety zone with the permission of the Captain of the Port on a case-by-case basis; and (iii) this rule will be enforced for only the duration of recovery operations.

## 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 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 may be small entities: The owners or operators of the vessels intending to transit Mantua Creek one mile north and one mile south of the East Jefferson Street Rail Bridge in Paulsboro, New Jersey from December 5, 2012 until all recovery operations are completed, unless cancelled earlier by the Captain of the Port.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: Vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or her representative. Sector Delaware Bay will issue maritime advisories widely accessible to users of the waterway.

## 3. Assistance for Small Entities

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**, 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 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 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. This rule is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary 165.T05–1060, to read as follows:

**§ 165.T05–1060 Safety Zone for Recovery Operations for East Jefferson Street Train Derailment, Mantua Creek; Paulsboro, NJ.**

(a) *Location.* All waters of Mantua Creek one mile north and one mile south of the East Jefferson Street Rail Bridge in Paulsboro, New Jersey.

(b) *Enforcement period.* This rule is effective on December 5, 2012, until January 15, 2013, unless cancelled earlier by the Captain of the Port.

(c) *Regulations:* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.33 of this part.

(1) All persons and vessels transiting through the Safety Zone must be authorized by the Captain of the Port or her representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her representative one hour prior to the intended time of transit.

(3) Vessels granted permission to transit must do so in accordance with the directions provided by the Captain of the Port or her representative to the vessel.

(4) To seek permission to transit the Safety Zone, the Captain of the Port or her representative can be contacted via Sector Delaware Bay Command Center (215) 271–4940.

(5) This section applies to all vessels wishing to transit through the Safety Zone except vessels that are engaged in the following operations: (i) Enforcing laws; (ii) servicing aids to navigation, and (iii) emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) The Captain of the Port may take possession and control of any vessel in the safety zone;

(9) The Captain of the Port may remove any person, vessel, article, or thing from a safety zone;

(10) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(11) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(d) *Definitions.* *The Captain of the Port* means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the Safety Zone by Federal, State, and local agencies.

Dated: December 5, 2012.

**K. Moore,**

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

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**BILLING CODE 9110–04–P**