



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-0227]

RIN 1625-AA00

Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a 500-yard safety zone around each of five locations where the Block Island Wind Farm (BIWF) wind turbine generator (WTG) foundations will be constructed in the navigable waters of the Rhode Island Sound, RI. These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF WTG foundations. Vessels are prohibited from entering into, transiting through, mooring, or anchoring within these safety zones while construction vessels and associated equipment are present, unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until September 30, 2015. For the purposes of enforcement, actual notice will be used from Wednesday, July 1, 2015, to [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2015-0227. To view documents mentioned in the 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, contact Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, telephone 401-435-2351, email Edward.G.LeBlanc@uscg.mil. If you have questions on viewing the docket, please contact Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

BIWF	Block Island Wind Farm
FR	Federal Register
NTM	Notice To Mariners
WTG	Wind Turbine Generator
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

On April 21, 2015, we published a NPRM entitled "Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI" in the Federal Register (80 FR 22144). We received no comments on the rule.

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. This provision authorizes an agency to make a rule effective less than 30 days after publication in the Federal Register when the agency for good cause finds that delaying the effective period for 30 days or more is "impracticable, unnecessary, or contrary to the public interest." 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 because construction of the Block Island Wind Farm is scheduled to begin in early July, the environmental window within which construction can be conducted is short, and no comments opposing the safety zone were received in response to the

NPRM. Therefore, it is impracticable to make this rule effective 30 days or more after publication in the Federal Register.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; and Department of Homeland Security Delegation No. 0170.1., which collectively authorize the Coast Guard to establish safety zones.

This rule is necessary to provide for the safety of life and navigation, for both workers and the boating public, within the vicinity of the BIWF in Rhode Island Sound, RI.

Background

The Coast Guard is establishing a 500-yard safety zone around each of five locations where the BIWF WTG foundations will be constructed in the navigable waters of the Rhode Island Sound, RI, from July 1 to September 30, 2015. Locations of these platforms are:

<u>Platform</u>	<u>Latitude</u>	<u>Longitude</u>
WTG 1	41° 7.544'N	71° 30.454'W
WTG 2	41° 7.196'N	71° 30.837'W
WTG 3	41° 6.886'N	71° 31.268'W
WTG 4	41° 6.612'N	71° 31.747'W
WTG 5	41° 6.383'N	71° 32.259'W

These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF WTG foundations. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within these safety zones while construction vessels and associated equipment are present unless authorized by the COTP, Southeastern New England or the COTP's designated representative.

Discussion of Comments, Changes and the Final Rule

No comments were received and no changes were made to the language contained in the NPRM.

C. 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. Executive Order 12866 and Executive Order 13563

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the adverse economic impact of this rule to be minimal. Although this regulation may have some adverse impact on the public, the potential impact will be minimized for the following reasons: vessels will only be restricted from the safety zones during periods of actual construction activity from July 1 to September 30, 2015; and the BIWF is located approximately three miles offshore from Block Island and the safety zones are only 500-yards in radius centered on the five BIWF WTG foundation locations, allowing plenty of room for vessels to pass without having to divert a long distance around the construction areas.

Notification of the BIWF construction activity and the effective enforcement periods of the associated safety zones will be made to mariners through the Rhode Island Port Safety Forum, and local and broadcast NTMs.

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: owners or operators of vessels intending to enter, transit, moor, or anchor within 500 yards of the five BIWF WTG foundation construction locations.

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 would call 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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it 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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would 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

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 would not create an environmental risk to health or risk to safety that might 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 would 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 rule 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. A final categorical exclusion document and environmental checklist are located in the docket for 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.T01-227 to read as follows:

§ 165.T01-227 Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI.

(a) Location. Areas within a 500-yard radius of the following five positions are safety zones:

<u>Platform</u>	<u>Latitude</u>	<u>Longitude</u>
WTG 1	41° 7.544'N	71° 30.454'W
WTG 2	41° 7.196'N	71° 30.837'W
WTG 3	41° 6.886'N	71° 31.268'W
WTG 4	41° 6.612'N	71° 31.747'W
WTG 5	41° 6.383'N	71° 32.259'W

(b) Enforcement period. From July 1 to September 30, 2015, vessels will be prohibited from entering into any of these safety zones, when enforced, during construction activity of five Block Island Wind Farm (BIWF) wind turbine generators (WTG) located in the positions listed in paragraph (a) of this section.

(c) Definitions. The following definitions apply to this section:

Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf.

(d) Regulations. (1) The general regulations contained in § 165.23 as well as the following regulations apply to the safety zones established in conjunction with the construction of the Block Island Wind Farm; Rhode Island Sound, RI. These regulations may be enforced for the duration of construction.

(2) Vessels may not enter into, transit through, moor, or anchor in these safety zones during periods of enforcement unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger construction vessels or associated equipment.

(3) Failure to comply with a lawful direction from the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative may result in expulsion from the area, citation for failure to comply, or both.

Dated: June 10, 2015.

J. T. Kondratowicz,
Captain, U.S. Coast Guard,
Captain of the Port Southeastern New England.
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