



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1069]

RIN 1625-AA00

Safety Zone; Grain-Shipment Vessels, Columbia and Snake Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone around all inbound and outbound grain-shipment vessels involved in commerce with Export Grain Terminal, Longview, WA, while they are located on the Columbia and Snake Rivers. This safety zone extends to waters 500 yards ahead of these vessels and 200 yards abeam and astern of these vessels. This safety zone is being implemented to ensure that protest activities associated with the opening of the Export Grain Terminal to maritime traffic does not prevent safe navigation of grain shipment vessels and other vessels using the waterway during grain-shipment vessel transits to and from the terminal.

DATES: This rule is effective from 12:01 A.M. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 12:01 A.M. on April 1, 2012. Comments must be received on or before March 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1069 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1069 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 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 temporary rule, call or e-mail BM1 Sylvestre Suga, Waterways Management Division, Coast Guard Marine Safety Unit Portland; telephone 503-240-9319, e-mail Sylvestre.G.Suga@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary interim 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 to do so would be contrary to public interest because delayed promulgation may result in injury or damage to the maritime public, vessel crews, the vessels themselves, and law enforcement personnel from protest activities that could occur prior to conclusion of a notice and comment period.

On September 8, 2011, a large protest occurred at Export Grain Terminal (EGT) in which over 200 protestors were arrested for criminal offenses including assault. These protest activities resulted in damage to rail cars and the cargo they were carrying. The Longview local International Longshore and Warehouse Union (ILWU) has also been subject to fines for contempt of court for engaging in

activity that violated a temporary restraining order. Subsequent protest activities aimed at blocking rail access to EGT on September 21, 2011 led to further arrests.

These protest activities arose from a labor dispute between the ILWU, the Port of Longview, and EGT. The dispute is ongoing and picketing activity occurs daily at the EGT facility in Longview, WA. EGT has not yet opened for vessel traffic; however, as recently as November 5, 2011, the president of the ILWU's Local 21 has threatened that protest activities will be mounted when the first vessel arrives to load at EGT's facility.

The schedule of vessel arrivals at EGT is controlled by a number of factors over which the Coast Guard has no control. Additionally, these vessels may be arriving at EGT from foreign ports. Consequently, it is impracticable for grain-shipment vessel arrival schedules to be changed or delayed in order to accommodate a notice of proposed rulemaking and subsequent comment period.

Due to past protest events, threats of similar protest activity in the future, and the significant difficulty and impracticality of changing vessel arrival schedules, the Coast Guard finds it is contrary to the public interest to delay implementation of this safety zone during a notice and comment period. Postponing the promulgation creates a

very likely risk that protest activities will threaten safe navigation and the safety of persons and property on the Columbia and Snake rivers when vessels begin arriving at EGT, Longview, WA.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because to do otherwise would be contrary to the public interest since the protest activities associated with EGT are unpredictable and potentially volatile and may result in injury to persons and property. Delaying the effective date until 30 days after publication may mean that grain-shipment vessels will have arrived or departed the Columbia and Snake Rivers before the end of a 30 day period. This delay would eliminate the safety zone's effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic during the transit of grain-shipment vessels that may arrive or depart before 30 days have elapsed.

Although the Coast Guard has good cause to issue this temporary rule without first publishing a proposed rule, you are invited to submit post-promulgation comments and related material regarding this rule through March 1, 2012. All comments will be reviewed as they are received. Your

comments will assist us in drafting future rules should they be necessary, and may result in changes to this temporary interim rule before it expires. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) for their Docket Management Facility to process online submissions to Coast Guard dockets. You may review the Department of Transportation's Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Background and Purpose

The ILWU, the Port of Longview, WA, and EGT have been engaged in a labor dispute related to the newly-constructed facility. In addition to picketing, ILWU members have engaged in protest activities that have resulted in personal injury and property damage. In particular, a large-scale protest on September 8, 2011 led to arrests for criminal offenses. Additionally, protesters blocked the arrival of the first rail delivery of cargo to the facility. Although the focus of these protests was ashore, there were some waterborne protest activities on the waters adjacent to the EGT piers.

The labor dispute continues, as do the protest efforts. As recently as November 5, 2011, the president of the ILWU's Local 21 threatened that protest activities, similar to those that occurred upon the arrival of the first rail shipment, will be mounted when the first vessel arrives to load at EGT's facility. Once EGT opens for vessel traffic, grain-shipment vessels will be transiting the Columbia and Snake Rivers with cargos of various grain products bound for and departing from EGT at Longview, WA. Based on the past violent protest activities and the ILWU's stated intent to interfere with the inaugural vessel arrival at EGT, Longview, WA, the Coast Guard has determined that a temporary safety zone is required around vessels bound for and departing from that facility.

This safety zone is being implemented to help ensure the safe navigation of maritime traffic on the Columbia River while grain-shipment vessels transit to and from EGT at Longview, WA. This safety zone applies equally to all waterway users and is intended to allow maximal use of the waterway consistent with safe navigation and to ensure that protestors are not injured by deep-draft vessels with maneuvering characteristics with which protesters afloat may be unfamiliar.

Discussion of Rule

This rule establishes a temporary safety zone around grain-shipment vessels while they are located in the Columbia and Snake Rivers. This safety zone extends to waters 500 yards ahead of grain-shipment vessels and 200 yards abeam and astern of these vessels. No person or vessel may enter or remain in the safety zone without authorization from the Captain of the Port Columbia River or his designated representatives.

This rule is effective from 12:01 A.M. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 12:01 A.M. on April 1, 2012.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

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. The Office of Management and Budget has not reviewed it under that Order.

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). Although this rule will restrict access to the regulated area, the effect of this rule will not be significant because: (i) individual grain-shipment vessel safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the grain-shipment vessel safety zone; (iii) the grain-shipment vessel safety zone will only be effective for a limited geographical location over a limited duration while grain-shipment vessels transit to berth; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) individual grain-shipment vessel safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the grain-shipment vessel safety zone; (iii) the grain-shipment vessel safety zone for any given transiting grain-shipment vessel will effect a limited geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

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 believe that this rule and the process by which it was drafted adhere to the federalism principles outlined in Executive Order 13132. The Coast Guard has coordinated with the officials from the states of Oregon and Washington in drafting this rule. By allowing state enforcement of this rule, it is in accord with paragraph (h) of section 2 of the Executive Order, which encourages recognition of

responsibility of localities and their sub-units to pursue objectives through their own means. This rule puts no obligation on state or municipal governments, but simply allows for their participation in enforcement activities.

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.

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.

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.

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.

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

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 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 is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

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 § 165.T13-200 to read as follows:

§ 165.T13-200 Safety Zone; Grain-Shipment Vessels, Columbia and Snake Rivers

(a) Definitions. As used in this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Grain-Shipment Vessel* means any vessel bound for or departing from Export Grain Terminal (EGT), Longview, WA, or any vessel assisting such a vessel to moor or maneuver.

(3) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(4) *Navigation Rules* means the Navigation Rules, International-Inland.

(5) *Official Patrol* means those persons designated by the Captain of the Port to monitor a grain-shipment vessel safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the

Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(6) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(7) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(8) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) Location. The following areas are safety zones: All navigable waters of the United States within the Columbia River Captain of the Port Zone, between the Columbia Bar "CR" buoy and extending eastward on the Columbia River to Kennewick, WA and upriver through Lewiston, ID on the Snake River, extending from the surface to the sea floor, that are:

(1) Not more than 500 yards ahead of any grain-shipment vessel that is underway and 200 yards abeam and astern of any grain-shipment vessel underway, or

(2) Within a maximum 200-yard radius of any grain-

shipment vessel that is anchored, at any berth, moored, or in the process of mooring.

(c) Effective Period. The safety zone created in this section will be in effect from 12:01 A.M. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 12:01 A.M. on April 1, 2012. It will be activated for enforcement as described in paragraph (d) of this section.

(d) Enforcement Periods. The Captain of the Port Columbia River will cause notice of the enforcement of the grain-shipment vessel safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. This notification of enforcement will identify the grain-shipment vessel by name and IMO number. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Captain of the Port Columbia River will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the grain-shipment vessel safety zone is suspended. Upon notice of enforcement by the Captain of the Port Columbia River, the Coast Guard will enforce the grain-shipment vessel safety zone in accordance with rules set out in this section. Upon notice of suspension of

enforcement by the Captain of the Port Columbia River, all persons and vessels are authorized to enter, transit, and exit the grain-shipment vessel safety zone, consistent with the Navigation Rules.

(e) Regulation. (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Columbia River, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within a grain-shipment vessel safety zone contact the on-scene official patrol on VHF-FM channel 16 or 13. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within a grain-shipment vessel safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within a grain-shipment vessel safety zone.

(4) Maneuver-restricted vessels. When conditions permit, the on-scene official patrol should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter or operate within a grain-shipment vessel safety zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within a grain-shipment vessel safety zone; and

(iii) Permit vessels that must transit via a navigable channel or waterway to enter or operate within a grain-shipment vessel safety zone in order to do so.

(f) Exemption. Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) Enforcement. Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the

Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(h) Waiver. The Captain of the Port Columbia River may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: January 6, 2012 B. C. Jones
Captain, U. S. Coast Guard
Captain of the Port, Columbia
River

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