



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1063]

RIN 1625-AA00

Moving Security Zone Around Escorted Vessels on the Lower Mississippi River

AGENCY: Coast Guard, DHS

ACTION: Temporary final rule.

SUMMARY: The Captain of the Port of New Orleans (COTP New Orleans) is re-establishing and extending the effective period for the moving security zone on the Mississippi river, mile marker 90 through mile marker 110, extending 300 yards on all sides of vessels being escorted by one or more Coast Guard assets.

DATES: Section 165.T08-040, temporarily added at 77 FR 6013, effective from January 1, 2012, through March 31, 2012, is re-established and effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through August 15, 2012. Beginning April 1, 2012 this rule continues to be enforced through actual notice.

ADDRESSES: Documents indicated in this preamble as being

available in the docket are part of docket USCG-2011-1063 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1063 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 Lieutenant Commander (LCDR) Kenneth Blair, Sector New Orleans, Coast Guard; telephone 504-365-2392, e-mail Kenneth.E.Blair@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 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. Based on risk evaluations completed, and information gathered, from November 26, 2011 to March 12, 2012 and after evaluating the security needs for escorted vessels, the Coast Guard determined that the existing moving security zones should be extended from April 1, 2012 through August 15, 2012. This moving security zone is needed to protect escorted vessels and personnel from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Providing a public notice and comment period for this temporary final rule is contrary to national security and the public interest.

Additionally, the City of New Orleans will be hosting several high visibility events beginning in April, 2012, including the French Quarter Festival and War of 1812 Commemoration that will bring thousands of people into the New Orleans Central Business District. A thirty day notice period would unnecessarily delay the effective dates and would be contrary to the public interest by delaying or

foregoing the necessary protections required for these escorted vessels and personnel. For these reasons, 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.

Basis and Purpose

Certain vessels, including high capacity passenger vessels, vessels carrying certain dangerous cargoes as defined in 33 CFR part 160, tank vessels constructed to carry oil or hazardous materials in bulk, and vessels carrying liquefied hazardous gas as defined in 33 CFR part 127 have been deemed by the COTP New Orleans to require escort protection during transit between mile marker 90.0 to mile marker 110.0 of the Lower Mississippi River. A moving security zone has been established for the escorted vessels, between mile marker 90.0 to mile marker 110.0, extending 300 yards in all directions of the escorted vessels. Vessels will not be allowed to transit through the moving security zone without the permission of the Captain of the Port, New Orleans or the on-scene Coast Guard asset. This security zone is necessary to protect the escorted vessels and personnel from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

Discussion of Rule

Under the authority of the Magnuson Act, 50 U.S.C. 191-195 and 33 CFR Part 6, the Coast Guard has established a moving security zone regulation to protect the escorted vessels and personnel. While this temporary rule remains in effect, vessels are prohibited from transiting in the vicinity of the escorted vessel, specifically within an area extending 300 yards in all directions from each escorted vessel. Deviations from this rule may be requested from the Captain of the Port New Orleans through the on-scene Coast Guard asset, via VHF Ch. 67 or the Coast Guard Vessel Traffic Center at (504) 365-2230. Notice of the moving security zones will be made through broadcast notices to mariners.

A vessel may request permission of the COTP New Orleans or the on-scene Coast Guard asset to enter the security zone. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the order of the COTP New Orleans or the on-scene asset. No vessel may enter the inner 50-yard portion of the security zone closest to the vessel being escorted. The COTP New Orleans will inform the public of the existence or status of the security zones around escorted

vessels in the regulated area by Marine Safety Information Bulletins or Broadcast Notice to Mariners. Coast Guard assets will be clearly identified by lights, vessel markings, or with agency insignia. This moving security zone is necessary to protect vessels deemed to be in need of escort protection by the COTP New Orleans for security reasons.

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, 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.

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). Due to its duration and location the impacts on routine navigation are expected to be minimal.

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 will affect the following entities, some of which may be small entities: the owners or operators of vessels, intending to transit in the vicinity of mile marker 90.0 through mile marker 110.0 of the Lower Mississippi River, extending 300 yards in all directions of an escorted vessel. This security zone will not have significant impact on a substantial number of small entities because of its location and duration. If you are a small business entity and are significantly affected by this regulation please contact Lieutenant Commander (LCDR) Kenneth Blair, Sector New Orleans, at 504-365-2392, or e-mail Kenneth.E.Blair@uscg.mil.

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 have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 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 affect 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 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 fits the category selected from paragraph (34)(g), as it establishes a temporary security zone for a limited period of time.

An environmental analysis checklist and a categorical exclusion determination are available and accessible in the docket as indicated in the ADDRESSES section.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record-keeping 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, 6.06-1, 6.05-6 AND 160.5; PUB. L. 107-295, 116 STAT. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Section 165.T08-040 is added to read as follows:

§ 165.T08-040 Moving Security Zone, Escorted Vessels.

(a) *Location.* The following areas are security zones:

Navigable waters of the Lower Mississippi River, from mile marker 90.0 to mile marker 110.0, extending 300 yards in all directions of escorted vessels. Escorted vessels will be escorted by one or more Coast Guard assets or other federal, state, or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia.

(b) *Effective period.* This rule is effective [INSERT DATE OF PUBLICAITON] through August 15, 2012. Beginning April 1, 2012 this rule is enforced through actual notice.

(c) *Regulation.* (1) Under the general regulations in § 165.33 of this part, vessels are prohibited from entering or transiting the security zones described in paragraph (a) of this temporary section, § 165.T08-040.

(2) If granted permission to enter a security zone, a vessel must operate at the minimum speed necessary to

maintain a safe course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard. When within the security zone, no vessel or person is allowed within 50 yards of the escorted vessel unless authorized by the Coast Guard.

(3) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans through the on-scene Coast Guard or other agency asset, via VHF Ch. 67 or the Coast Guard Vessel Traffic Center at (504) 365-2230.

(4) All persons and vessels granted permission to enter a security zone must comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard, and local, state, and federal law enforcement officers on clearly identified law enforcement agency vessels.

(d) *Informational broadcasts.* The Captain of the Port or a designated representative will inform the public through marine safety information bulletins or broadcast notices to mariners of this regulation.

DATED: April 1, 2012

John J. Arenstam

Captain, U.S. Coast Guard

Acting, Captain of the Port New Orleans

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