



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0237]

RIN 1625-AA00

Safety Zone; Long Beach Container Terminal Crane Transit; Long Beach, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary moving safety zone in the Port of Long Beach around the M/V ZHEN HUA 28. This temporary safety zone is necessary to provide for the safety of the waterway users and the M/V ZHEN HUA 28 during the vessel's transit into the Port Long Beach, its stay at Long Beach Container Terminal (LBCT), and its outbound transit departing LBCT. Entry of persons or vessels into this temporary safety zone is prohibited unless specifically authorized by the Captain of the Port, Los Angeles - Long Beach, or her designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], to 11:00 p.m. on April 14, 2017. For purposes of enforcement, actual notice will be used from 12 a.m. on March 25, 2017, through [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-2017-0237 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 email BMC James Morgia, Waterways Management, U.S. Coast Guard Sector Los Angeles – Long Beach; telephone (310) 521-3860, e-mail James.M.Morgia@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
LLNR	Light List Number
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

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 notice of proposed rulemaking (NPRM) with respect to this rule. Publishing an NPRM would be impracticable in this case due to having received initial notice of the event on March 13, 2017.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the reasons stated above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of

the Port (COTP), Los Angeles - Long Beach has determined that potential hazards associated with navigation safety that arise because of the potentially hazardous condition of the cranes onboard the M/V ZHEN HUA 28 and the vessel's limited ability to maneuver. This temporary safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners, in the Port of Long Beach.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 12:00 a.m. on March 25, 2017, to 11:00 p.m. on April 14, 2017, encompassing all navigable waters from the surface to the sea floor within 200 yards of the M/V ZHEN HUA 28 while the vessel is underway and 100 yards while moored or at anchor, while cranes remain onboard the vessel. This temporary moving safety zone will only be enforced during the vessel's transit from the Long Beach Pilot Operating Area outside of the federal breakwater into port to LBCT, while at anchor or at berth while cranes remain onboard the vessel, and the vessel's outbound transit departing LBCT to the Long Beach Pilot Operating Area.

No vessel or person is permitted to operate in the safety zone without obtaining permission from the Captain of the Port (COTP) or the COTP's designated representative. Sector Los Angeles – Long Beach may be contacted on VHF–FM Channel 16 or 310-521-3801. The general boating public will be notified prior to the enforcement of the temporary moving safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 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. E.O. 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 E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. The size of the zone is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. The zone will be in place during the scheduled vessel transit to LBCT, while at berth offloading cranes, and during the scheduled vessel departure from LBCT. Any hardships experienced by persons or vessels are considered minimal compared to the interest in protecting the public.

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 (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 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 E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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 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.T11-844 to read as follows:

§ 165.T11-844 Safety Zone; Long Beach Container Terminal Crane Transit; Long Beach, California.

(a) Location. The following area is a safety zone: All navigable waters from the surface to the sea floor within a 200 yard radius of the M/V ZHEN HUA 28 while transiting and 100 yard radius while moored or at anchor. This temporary moving safety zone will only be enforced during the vessel's transit from the Long Beach Pilot Operating Area outside of the federal breakwater into port to LBCT, while at anchor or at berth while cranes remain onboard the vessel, and the vessel's outbound transit departing LBCT to the Long Beach Pilot Operating Area.

- (b) Definitions. For the purposes of this section:

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, hail Coast Guard Sector Los Angeles – Long Beach on VHF–FM Channel 16 or call at (310) 521-3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This section is effective beginning at 12:00 a.m. on March 25, 2017, to 11:00 p.m. on April 14, 2017. This rule will be enforced during the vessel's transit from the Long Beach Pilot Operating Area outside of the federal breakwater into port to LBCT, while at anchor or at berth while cranes remain onboard the vessel and the vessel's transit departing LBCT to the Long Beach Pilot Operating Area. The general boating public will be notified prior to the enforcement of the temporary moving safety zone via Broadcast Notice to Mariners.

M. L. Rochester,

Captain, U.S. Coast Guard,

Acting Captain of the Port, Los Angeles – Long Beach.

[FR Doc. 2017-06324 Filed: 3/30/2017 8:45 am; Publication Date: 3/31/2017]