



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2019-0794

RIN 1625-AA00

Safety Zone, Saint Simons Sound, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: On September 08, 2019, the Captain of the Port (COTP) Savannah issued an Emergency Safety Zone in response to the grounding/capsizing of the M/V GOLDEN RAY (31°07'39.66 North, 081°24'10.58 West, between Saint Simons Lighthouse and the north end of Jekyll Island, in the vicinity of green buoy #19). This Emergency Safety Zone prohibited all vessels from approaching within 0.5 nautical miles of M/V GOLDEN RAY, unless authorized by the COTP. As of September 13, 2019, this Emergency Safety Zone remained in effect for all vessels of 500 GT and above. No vessels 500 GT and above were able to transit within 0.5 nautical miles of the M/V GOLDEN RAY unless specifically authorized by the COTP. For all other vessels, the Emergency Safety Zone was enforced for 150 yards surrounding the site. No vessel could transit within 150 yards of the M/V GOLDEN RAY unless specifically authorized by the COTP. As of September 19, 2019, USCG Captain of the Port Savannah has adjusted the safety zone surrounding the M/V GOLDEN RAY, so that no vessel is authorized access within

150 yards of the M/V GOLDEN RAY, unless authorized by the Captain of the Port. The previous safety zone established on September 12, 2019 is terminated.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until no longer deemed necessary by the COTP Savannah. For the purposes of enforcement, actual notice will be used from September 19, 2019 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-2019-0794 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 MST1 Rachel Crowe, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; telephone 912-652-4353, extension 243, or email Rachel.M.Crowe@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	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 because doing so would be impracticable due to the emergent situation. Immediate action is needed to respond to the potential safety hazards created by the M/V GOLDEN RAY. The Coast Guard received information on September 8, 2019 regarding the vessel laying over on its side and impeding the navigable channel. Because of the on-going dangers posed by the grounded M/V GOLDEN RAY, this safety zone is necessary to provide for the safety of persons, vessels, and the marine environment in the incident area. Therefore, it is impracticable to delay promulgating this rule, as it is necessary to protect the safety of waterway users.

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. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the M/V GOLDEN RAY.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233). The COTP Savannah has determined that potential hazards associated with the M/V GOLDEN RAY casualty, will be a safety concern for anyone transiting in the area. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while salvage and response operations are on going.

IV. Discussion of the Rule

This rule establishes a safety zone on September 19, 2019 surrounding the M/V GOLDEN RAY. No vessel is authorized access within 150 yards of the M/V GOLDEN RAY, unless

authorized by the Captain of the Port. The previous safety zone established on September 12, 2019 is terminated.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and hazards associated with the vessel, as well as the complexity of salvage and pollution response operations. The safety zone is limited in size and will cover all navigable waters within a 150-yard radius of the M/V GOLDEN RAY for all vessels – a size necessary to ensure the safe operations of salvage and pollution response. No vessel is authorized access within 150 yards of the M/V GOLDEN RAY, unless authorized by the Captain of the Port. The Coast Guard will provide notification of the safety zone to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, a Marine Safety Information Bulletin release, and an

INMARSAT C message to NAVAREA IV. This notice allows mariners to make alternative plans or seek permission to transit the zone.

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 (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 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 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. 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 Directive 023-01 and Commandant Instruction M16475.1D, 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 involves a safety zone lasting until the COTP Savannah determines the M/V GOLDEN RAY is no longer a hazard to the safety of persons and vessels transiting the area. It is categorically excluded from further review under paragraph L 60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 2019-0794 to read as follows:

§ 2019-0794 Safety Zone; M/V GOLDEN RAY; Saint Simons Sound, GA.

- (a) Regulated area. The following areas are established as safety zones: All navigable waters within a 150-yard radius surrounding the M/V GOLDEN RAY, which is, grounded in position 31°07'39.66 North, 081°24'10.58 West, between Saint Simons lighthouse and the north end of Jekyll Island, in the vicinity of green buoy #19. All coordinates are North American Datum 1983 (NAD 83).
- (b) Definition. As used in this section, “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels or aircraft, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Savannah in the enforcement of the regulated areas.
- (c) Regulations. (1) No vessel is authorized access within 150 yards of the M/V GOLDEN RAY, unless authorized by the Captain of the Port.
(2) Persons or vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact COTP Savannah by telephone at (912) 652-4353, or a

designated representative via VHF radio on channel 16, to request authorization.

If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Savannah or a designated representative.

(3) The Coast Guard will provide actual notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletin, on-scene designated representatives, and an INMARSAT C message to NAVAREA IV.

(e) Enforcement period. This section will be enforced starting September 19, 2019, and will be in effect until further notice.

Dated: September 19, 2019.

Norm C. Witt,
Commander, U.S. Coast Guard,
Captain of the Port Savannah.
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