



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2023-0565]

RIN 1625-AA00

**Safety Zone; St. Johns River, Jacksonville, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule and request for comments.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the Atlantic Ocean and the St. Johns River around the Motor Vessel (M/V) ZHENG HOU 28. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the transit of the heavy lift vessel through the St. John's River. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Jacksonville or designated representative.

**DATES:** This temporary interim rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 11:59 p.m. on May 31, 2024. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on July 16, 2023 [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0565 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Marine Science Technician First Class Anthony DeAngelo, Waterways Management division, U.S. Coast Guard; telephone 904-714-7631, email Anthony.DeAngelo@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

COTP	Captain of the Port
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
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 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 temporary interim rule because doing so would be impracticable. This safety zone must be established by July 16,2023, in order to protect vessels and waterway users from the potential hazards associated with the transit of a large vessel carrying oversized gantry cranes.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this temporary interim rule would be contrary to the public interest because immediate action is needed to ensure the

protection of vessels and waterway users in during the transit of the vessel, and during the offload and installation of the cranes.

We are soliciting comments on this rulemaking. If we determine that changes to this rulemaking action are necessary, the Coast Guard will consider comments received in a subsequent temporary interim rule or temporary final rule.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Jacksonville (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) ZHENG HOU 28, and during the offloading of its cargo, and their installation onto the port. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the vessel is within the St. John's River.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 12:01 a.m. on July 16, 2023 until 11:59 p.m. on December 31, 2023. A moving and fixed temporary safety zone will be established for the vessel M/V ZHENG HOU 28. The moving safety zone will cover all navigable waters of the Atlantic Ocean and the St. Johns River within a 100-yard diameter of the vessel from the time the vessel passes the St. Johns River Sea Buoy, until the vessel is moored at Blount Island. The fixed safety zone will cover all navigable waters of the St. Johns River, within 25 yards of the vessel, while it is moored at Blount Island. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the vessel is within the limits of the St. John's River. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

### **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. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. The size of the safety zone is small, as it only covers a limited are of the St. John’s River and Atlantic Ocean, immediately surrounding the vessel. Further the zone shrinks even further once the vessel is moored at Blount Island, FL. The duration of the zone is intended to ensure the safety of vessels through the duration of the vessel’s inbound and transit and offload. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter 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 call or email 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.

*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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 moving temporary safety zone within 100-yard diameter safety zone of the vessel M/V ZHENG HOU 28 and a fixed temporary safety zone within 25 yards of the vessel, while it is moored at Blount Island. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

## **VI. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0565 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this temporary interim rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this temporary interim rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the temporary interim rule, you

should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the temporary interim rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. *Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **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 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. 00170.1, Revision No. 01.3.

2. Add § 165.T07-0565 to read as follows:

### **§ 165.T07-0565 Transit of the M/V ZHENG HOU 28, St. John’s River, FL.**

- (a) *Location.* The following areas are temporary safety zones:

- (1) All waters of the Atlantic Ocean and the St. John’s River, FL, from surface to bottom, that are within 100 yards when the vessel M/V ZHENG HOU 28 is transiting inbound from the St. Johns River Sea Buoy, until it is moored to Blount Island.

(2) All waters of the St. John's River, FL, from surface to bottom to within 25 yards of the vessel M/V ZHENG HOU 28, while the vessel is moored to Blount Island, FL.

(b) *Definitions.* As used in 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 Jacksonville (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, contact the COTP or the COTP's representative by Jacksonville by telephone at (904) 714-7557, or a designated representative via VHF-FM radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or a designated representative.

(d) *Enforcement period.* This section will be enforced from 12:01 a.m. on July 16, 2023 through 11:59 p.m., on December 31, 2023.

Dated: July 14, 2023.

J. D. Espino-Young,  
Captain, U.S. Coast Guard,  
Captain of the Port Jacksonville.