



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0250]

RIN 1625-AA00

Fixed and Moving Safety Zone; Vicinity of the M/V HAPPY DIAMOND, Houston Ship Channel and Seabrook, TX

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones, a moving safety zone and a fixed safety zone, around the M/V HAPPY DIAMOND in the navigable waters of the Houston Ship Channel and its vicinity. The temporary safety zones are necessary to protect persons, property, and the marine environment from potential hazards associated with the transfer of large gantry cranes. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zones unless specifically authorized by the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 4 p.m. on April 17, 2024. For the purposes of enforcement, actual notice will be used from 5 a.m. on April 4, 2024, until [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-2024-0250 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 about this rule, call or email MSTC Anthony Booth, Sector Houston-Galveston Waterway Management Division, Coast Guard; telephone 713-398-5823, email houstonwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
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 under authority in 5 U.S.C. 553(b)(B). This statutory 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.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard received all relevant information for the transfer of the large gantry cranes and the need for the safety zone on March 18, 2024. Insufficient time remains to publish an NPRM and receive and consider public comments because the rulemaking process would not be completed before the events commencement on April 4, 2024. Proceeding with the NPRM process would delay the establishment of the safety zones beyond the event date, compromising the safety of the M/V HAPPY DIAMOND, the crew, and other vessels navigating the surrounding waterways. Therefore, it is impracticable to publish an NPRM because we must establish the temporary safety zone by April 4, 2024.

Also, 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 transfer of large gantry cranes beginning on April 4, 2024.

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 Houston-Galveston (COTP) has determined that potential hazards associated with the transfer of large gantry cranes starting April 4, 2024, will be a safety concern for anyone within a 100-yard radius while the M/V HAPPY DIAMOND is in transit and for anyone within 25-yard radius while the M/V HAPPY DIAMOND is moored. This rule is needed to protect persons, property, and the marine environment within the navigable waters of the safety zones while the M/V HAPPY DIAMOND transits to and unloads in Seabrook, Texas.

IV. Discussion of the Rule

This rule establishes two temporary safety zones from 5 a.m. on April 4, 2024, through 4 p.m. on April 17, 2024. The temporary safety zones include a moving safety zone, covering all navigable waters within 100 yards of the M/V HAPPY DIAMOND, and a fixed safety zone, covering all navigable waters within 25 yards of the vessel. The duration of the zones is intended to ensure the safety of the public and navigable waters in the specified areas during the transit of the large gantry cranes in the Houston Ship Channel and while the vessel is moored. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zones without obtaining permission from the COTP or a designated representative.

Moving Safety Zone: This area includes all waters within 100 yards of the M/V HAPPY DIAMOND as the vessel transits from the Gulf of Mexico off the coast of Galveston and through the Houston Ship Channel. The following coordinates are the approximate start position 29°19'01.21"N, 094°38'38.1"W in the Gulf of Mexico off the

coast of Galveston.

Fixed Safety Zone: This area includes all waters within 25 yards of the M/V HAPPY DIAMOND once the vessel is moored at Bayport Terminal in Seabrook, Texas.

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 the 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, the Office of Management and Budget has not reviewed this rule.

This regulatory action determination is based on the safety zones size, location, duration, and time-of-day. The safety zones will be enforced for 15 days during the transfer of large gantry cranes in the Houston Ship Channel. Although the rule prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area without authorization from the COTP or a designated representative, they may operate in the surrounding areas during the enforcement period. The Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and/or Broadcast Notice to Mariners, and the rule would allow vessels to seek permission to enter the zones.

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 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 businesses. 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 principles of federalism 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 safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area during the transfer of large gantry

cranes in the Houston Ship Channel. 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.

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, 70124; 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.T08-0250 to read as follows:

§ 165.T08-0250 Fixed and Moving Safety Zone; Around the M/V HAPPY DIAMOND, Houston Ship Channel and Seabrook, TX.

(a) *Regulated Area.* The following areas are temporary safety zones:

(1) *Moving Safety Zone:* All waters within a 100-yard radius of the M/V HAPPY DIAMOND, as the vessel transits from the approximate coordinates

29°19'01.21" N, 094°38'38.1" W, off the coast of Galveston, and proceeds through the Houston Ship Channel to the assigned docking stations.

(2) *Fixed Safety Zone*: All waters within a 25-yard radius of the M/V HAPPY DIAMOND, while moored, at the Bayport Terminal in Seabrook, Texas, will be in effect for the event's duration.

(b) *Definition*. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP Houston-Galveston in the enforcement of the regulated areas.

(c) *Regulations*. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP or the COTP's designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the COTP by telephone at 866-539-8114, or the COTP's designated representative via VHF radio on channel 16. If authorization is granted by the COTP or the COTP's designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or the COTP's designated representative.

(d) *Enforcement Period*. This rule will be subject to enforcement from 5 a.m. on April 4, 2024, through 4 p.m. on April 17, 2024.

Dated: April 3, 2024.

Keith M. Donohue,
Captain, U.S. Coast Guard,
Captain of the Port Sector Houston-Galveston.
[FR Doc. 2024-07571 Filed: 4/9/2024 8:45 am; Publication Date: 4/10/2024]