

**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(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.809 to read as follows:

**§ 165.809 Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX.**

(a) *Location.* The following areas are designated as a security zone:

(1) *Port of Port Lavaca-Point Comfort*—all waters between the Dredge Island Bridge at 28°39'30" N, 96°34'20" W and a line drawn between points 28°38'10" N, 96°33'15" W and 28°38'10" N, 96°34'45" W including the Point Comfort turning basin and the adjacent Alcoa Channel. These coordinates are based upon NAD 1983.

(2) *Port of Corpus Christi Inner Harbor*—all waters of the Corpus Christi Inner Harbor from the Inner Harbor Bridge (US HWY 181) to, and including the Viola Turning Basin.

(b) *Regulations.* (1) No recreational vessels, passenger vessels, or commercial fishing vessels may enter these security zones unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

(2) Recreational vessels, passenger vessels and commercial fishing vessels requiring entry into these security zones must contact the Captain of the Port Corpus Christi or his designated representative. The Captain of the Port may be contacted via VHF Channel 16 or via telephone at (361) 888–3162 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Corpus Christi or his designated representative.

(3) Designated representatives include U.S. Coast Guard commissioned, warrant, and petty officers.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: September 25, 2002.

**William J. Wagner, III,**

*Captain, U.S. Coast Guard, Captain of the Port, Corpus Christi.*

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**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

**[COTP Houston–Galveston–02–010]**

**RIN 2115–AA97**

**Security Zones; Ports of Houston and Galveston, TX**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing permanent moving security zones around cruise ships that are transiting, anchored or moored in the Ports of Houston and Galveston, Texas. These security zones are needed for the safety and security of these vessels. Entry into these zones is prohibited to all persons and vessels unless authorized by the Captain of the Port, Houston-Galveston or designated representative.

**DATES:** This rule is effective beginning 8 a.m. October 15, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of [COTP Houston-Galveston-02-010] and are available for inspection or copying at Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On June 11, 2002, the Coast Guard published a notice of proposed rule making (NPRM) entitled "Security Zones; Ports of Houston and Galveston, TX", in the **Federal Register** (67 FR 39917). We received no comments on the proposed rule. No public hearing was requested, and none was held.

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.** National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. The temporary final rule published in the **Federal Register** on May 1, 2002 (67 FR 21578) as amended on June 11, 2002 (67 FR 39848) expires on October 15, 2002. This rule replaces the original temporary final rule. Any delay in making this rule effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

**Background and Purpose**

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, Houston-Galveston established temporary security zones around these vessels [COTP Houston-Galveston-02-006]. A temporary final rule was published May 1, 2002 in the **Federal Register** (67 FR 21578). An extension of this temporary final rule was published June 11, 2002 (67 FR 39848) extending the effective date until 8 a.m. October 15, 2002. We received no comments concerning this temporary final rule.

Advisories regarding threats of terrorism continue. The Captain of the Port Houston-Galveston has determined that there is a need for this security zone to remain in effect indefinitely. The Captain of the Port Houston-Galveston is establishing permanent security zones around these vessels as they transit within the Ports of Houston and Galveston.

A moving security zone will be established when a cruise ship passes the Galveston Bay Approach Lighted Buoy "GB" inbound and continues through its transit, mooring, and return transit until it passes the sea buoy outbound. The establishment of moving security zones described in this rule will be announced to mariners via Marine Safety Information Broadcast. In the Ports of Houston and Galveston, no vessel may operate within 500 yards of a cruise ship unless operating at the minimum safe speed required to maintain a safe course. Except as described in this rule, no person or vessel is permitted to enter within 100 yards of a cruise ship unless expressly

authorized by the Captain of the Port Houston-Galveston. Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

The Houston Ship Channel narrows to 400 feet or less near Houston Ship Channel Entrance Lighted Bell Buoy "18" and continues at this width through Barbour's Cut. Between these points vessels that must transit the navigable channel will have to gain permission from the Captain of the Port Houston-Galveston or designated representative, to pass within 100 yards of a cruise ship. Mariners that anticipate encountering a cruise ship in this section of the channel are encouraged to contact "Houston Traffic" prior to getting underway.

For the purpose of this final rule the term "cruise ship" is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR Parts 120 and 128.

#### **Discussion of Comments and Changes**

We received no comments on the proposed rule or temporary final rule. Therefore, we have made no changes to the provisions of the proposed rule.

#### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zone will only impact navigation for a short period of time and the size of the zone allows for the transit of most vessels with minimal delay.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we 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 a narrow portion of the Houston-Galveston Ship Channel during a transit of a cruise ship in the same narrow location. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. Between the Houston-Galveston Sea buoy and Houston Ship Channel Entrance Lighted Bell Buoy "18" the size of the security zone allows for vessels to safely transit around or through the zone with minimal interference.

2. Between Houston Ship Channel Entrance Lighted Bell Buoy "18" and Barbour's Cut the channel narrows to 400 feet. In this section the Captain of the Port Houston-Galveston through Vessel Traffic Service (VTS) Houston-Galveston, "Houston Traffic," and designated on scene personnel may grant vessels permission to pass within 100 yards of a cruise ship.

If you are a small business entity and are significantly affected by this regulation please contact, LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671-5100.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could 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).

#### **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 would 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 effect 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 will not create an environmental risk to health or risk to safety that might 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 would 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

### 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(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Add § 165.813 to read as follows:

#### § 165.813 Security Zones; Ports of Houston and Galveston, TX.

(a) *Location.* Within the Ports of Houston and Galveston, Texas, moving security zones are established encompassing all waters within 500 yards of a cruise ship between Galveston Bay Approach Lighted Buoy "GB", at approximate position 29°21'18" N, 94°37'36" W [NAD 83] and up to, and including, Barbour's Cut. These zones

remain in effect during the inbound and outbound entire transit of the cruise ship and continues while the cruise ship is moored or anchored.

(b) *Regulations.* (1) Entry of vessels or persons into these zones is prohibited unless authorized as follows.

(i) Vessels may enter within 500 yards but not closer than 100 yards of a cruise ship provided they operate at the minimum speed necessary to maintain a safe course.

(ii) No person or vessel may enter within 100 yards of a cruise ship unless expressly authorized by the Coast Guard Captain of the Port Houston-Galveston. Where the Houston Ship Channel narrows to 400 feet or less between Houston Ship Channel Entrance Lighted Bell Buoy "18", light list no. 34385 at approximately 29°21'06" N, 94°47'00" W [NAD 83] and Barbour's Cut, the Captain of the Port Houston-Galveston may permit vessels that must transit the navigable channel between these points to enter within 100 yards of a cruise ship.

(iii) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

(2) Vessels requiring entry within 500 yards of a cruise ship that cannot slow to the minimum speed necessary to maintain a safe course must request express permission to proceed from the Captain of the Port Houston-Galveston, or his designated representative.

(3) For the purpose of this section the term "cruise ship" is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(4) The Captain of the Port Houston-Galveston will inform the public of the moving security zones around cruise ships via Marine Safety Information Broadcasts.

(5) To request permission as required by these regulations contact "Houston Traffic" via VHF Channels 11/12 or via phone at (713) 671-5103.

(6) All persons and vessels within the moving security zone shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: September 20, 2002.

**Kevin S. Cook,**

*Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-2389, MM Docket No. 01-65; RM-10078, RM-10188 & RM-10189]

**Radio Broadcasting Services; Brandon, SD; Emmetsburg, Sanborn and Sibley, IA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 261C3 for Channel 261A at Emmetsburg, Iowa, modifies the license for Station KEMB accordingly, and deletes vacant Channel 262A at Sibley, Iowa, in response to a petition filed by Eisert Enterprises, Inc. See 66 FR 15065, March 15, 2001. The coordinates for Channel 261C3 at Emmetsburg are 43-07-24 and 94-51-29. In response to the counterproposal filed by Eisert Enterprises (RM-10189), we shall allot Channel 264A at Sanborn, Iowa, at coordinates 43-10-53 and 95-39-23. The counterproposal filed by Saga Communications of Iowa (RM-10188) requesting the substitution of Channel 261C3 for vacant Channel 261A at Brandon, South Dakota, has been denied. With this action, this proceeding is terminated.

**DATES:** Effective November 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 01-65, adopted September 25, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).