

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-03-207]

RIN 1625-AA00

Security Zone; Cape Fear River, Eagle Island, North Carolina State Port Authority Terminal, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone at the North Carolina State Port Authority (NCSPA), Wilmington to include the Cape Fear River and Eagle Island. Entry into or movement within the security zone will be prohibited without authorization from the COTP. This action is necessary to safeguard the vessels and the facility from sabotage, subversive acts, or other threats.

DATES: This rule is in effect from January 15, 2004, to June 13, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05-03-207 and are available for inspection or copying at the Marine Safety Office 721 Medical Center Drive Wilmington, North Carolina 28401 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Chuck Roskam, Chief, Port Operations (910) 772-2200 or toll free (877) 229-0770.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. The Coast Guard is promulgating this security zone regulation to protect NCSPA Wilmington and the surrounding vicinity from threats to national security. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication are not required for this regulation.

Background and Purpose

Vessels frequenting the North Carolina State Port Authority (NCSPA) Wilmington facility serve as a vital link in the transportation of military munitions, explosives, equipment, and personnel in support of Department of Defense missions at home and abroad. This vital transportation link is

potentially at risk to acts of terrorism, sabotage and other criminal acts. Munitions and explosives laden vessels also pose a unique threat to the safety and security of the NCSPA Wilmington, vessel crews, and others in the maritime community and the surrounding community should the vessels be subject to acts of terrorism or sabotage, or other criminal acts. The ability to control waterside access to vessels laden with munitions and explosives, as well as those used to transport military equipment and personnel, moored at the NCSPA Wilmington is critical to national defense and security, as well as to the safety and security of the NCSPA Wilmington, vessel crews, and others in the maritime community and the surrounding community. Therefore, the Coast Guard is establishing this security zone to safeguard human life, vessels and facilities from sabotage, terrorist acts or other criminal acts.

Discussion of Rule

The security zone is necessary to provide security for, and prevent acts of terrorism against, vessels loading or offloading and the NCSPA Wilmington facility during a military operation. It will include an area from 800 yards south of the Cape Fear River Bridge encompassing the southern end of Eagle Island, the Cape Fear River, and the grounds of the State Port Authority Terminal south to South Wilmington Terminal. The security zone will prevent access to unauthorized persons who may attempt to enter the secure area via the Cape Fear River, the North Carolina State Port Authority terminal, or use Eagle Island as vantage point for surveillance of the secure area. The security zone will protect vessels moored at the facility, their crews, others in the maritime community and the surrounding communities from subversive or terrorist attack that could cause serious negative impact to vessels, the port, or the environment, and result in numerous casualties.

No person or vessel may enter or remain in the security zone at any time without the permission of the Captain of the Port, Wilmington. Each person or vessel operating within the security zone will obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from this security zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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 Homeland Security (DHS).

Although this regulation restricts access to the security zone, the effect of this regulation will not be significant because: (i) The COTP or his or her representative may authorize access to the security zone; (ii) the security zone will be enforced for limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have 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 or anchor in a portion of the Cape Fear River that is within the security zone.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the security zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the COTP or his or her designated representative. Before the effective period, we will issue maritime advisories widely available to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact the address listed under **ADDRESSES**.

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 will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect 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 does not create an environmental risk to health or risk to safety that may 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 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.

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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05-207 to read as follow:

§ 165.T05-207 Security Zone: Cape Fear River, Eagle Island and North Carolina State Port Authority Terminal, Wilmington, NC.

(a) *Location.* The following area is a security zone: The grounds of the North Carolina State Port Authority, Wilmington Terminal and the southern portion of Eagle Island; and an area encompassed from South Wilmington Terminal at 34°10'38.394" N, 077°57'16.248" W (Point 1); across Cape Fear River to Southern most entrance of Brunswick River on the West Bank at 34°10'38.052" N, 077°57'43.143" W (Point 2); extending along the West bank of the Brunswick River for approximately 750 yards to 34°10'57.062" N, 077°58'01.342" W (Point 3); proceeding North across the Brunswick River to the east bank at 34°11'04.846" N, 077°58'02.861" W (Point 4) and continuing north on the east bank for approximately 5000 yards along Eagle Island to 34°13'17.815" N, 077°58'30.671" W (Point 5); proceeding East to 34°13'19.488" N, 077°58'24.414" W (Point 6); and then approximately 1700 yards to 34°13'27.169" N, 077°57'51.753" W (Point 7); proceeding East to 34°13'21.226" N, 077°57'19.264" W (Point 8); then across Cape Fear River to the Northeast corner of the Colonial Terminal Pier at 34°13'18.724" N, 077°57'07.401" W (Point 9), 800 yards South of Cape Fear Memorial Bridge; proceeding South along shoreline (east bank) of Cape Fear River for approximately 500 yards; proceeding east inland to Wilmington State Port property line at 34°13'03.196" N, 077°56'52.211" W (Point 10); extending South along Wilmington State Port property line to 34°12'43.409" N, 077°56'50.815" W (Point 11); proceeding to the North entrance of Wilmington State Port at 34°12'28.854" N, 077°57'01.017" W (Point 12); proceeding South along Wilmington State Port property line to 34°12'20.819" N, 077°57'08.871" W (Point 13); continuing South along the Wilmington State Port property line to 34°12'08.164" N, 077°57'08.530" W (Point 14); continuing along State Port property to 34°11'44.426" N, 077°56'55.003" W (Point 15); proceeding South to the main

gate of the Wilmington State Port at 34°11'29.578" N, 077°56'55.240" W (Point 16); proceeding South approximately 750 yards to the Southeast property corner of the Apex facility at 34°11'10.936" N, 077°57'04.798" W (Point 17); proceeding West to East bank of Cape Fear River at 34°11'11.092" N, 077°57'17.146" W (Point 18); proceeding South along East bank of Cape Fear River to the point of origins at 34°10'38.394" N, 077°57'16.248" W (Point 1).

(b) *Captain of the Port. Captain of the Port* means the Commanding Officer of the Marine Safety Office Wilmington, NC, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on her behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels with a need to enter or get passage within the security zone, must first request authorization from the Captain of the Port. The Captain of the Port's representative enforcing the zone can be contacted on VHF marine band radio, channel 16. The Captain of the Port can be contacted at (910) 772-2200 or toll free (877) 229-0770.

(3) The operator of any vessel within this security zone must:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port or his or her designated representative.

(ii) Proceed as directed by the Captain of the Port or his or her designated representative.

(d) *Effective period.* This section is effective from January 15, 2004, to June 13, 2004.

Dated: January 15, 2004.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, North Carolina.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Juan 03-176]

RIN 1625-AA00

Security Zone; St. Croix, United States Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is re-establishing a temporary security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands. This security zone extends 3 miles seaward from the HOVENSA facility waterfront area along the south coast of the island of St. Croix, U.S. Virgin Islands. All vessels must receive permission from the U.S. Coast Guard Captain of the Port San Juan to enter this temporary security zone. This security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts.

DATES: This rule is effective from 11:59 p.m. on December 24, 2003, through 11:59 p.m. on April 15, 2004. Comments and related material must reach the Coast Guard on or before April 12, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket [COTP San Juan 03-176] and will be available for inspection or copying at Marine Safety Office San Juan between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays. Marine Safety Office San Juan, is located in the RODVAL Bldg, San Martin St. 90 Ste 400, Guaynabo, PR 00968. Marine Safety Office San Juan maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: LT Fred Meadows, Marine Safety Office San Juan, Puerto Rico at (787) 706-2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, 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**.

Similar regulations were established on December 19, 2001, and published in the **Federal Register** (67 FR 2332, January 17, 2002); and again on September 13, 2002 (67 FR 57952, September 13, 2002), on March 18, 2003 (67 FR 22296, April 28, 2003); and on June 30, 2003 (67 FR 41081, July 10, 2003). However, these regulations have expired—on June 15, 2002; December 15, 2002; June 15, 2003; and December

15, 2003, respectively. We did not receive any comments on these regulations.

The Captain of the Port San Juan has determined that due to the continued security risks, the nature of the HOVENSA facility, recent increases in the Homeland Security Advisory System level and maritime security level, this rule is needed to ensure the safety and security of this facility. The Coast Guard intends to publish a notice of proposed rulemaking to propose making this temporary rule a final rule.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you submit a comment, please include your name and address, identify the docket number for this rulemaking (COTP San Juan 03-176), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying to the address indicated in **ADDRESSES**. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Background and Purpose

Based on the September 11, 2001, terrorist attacks and recent increases in maritime security levels, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels without a scheduled arrival from coming within 3 miles of the HOVENSA facility unless specifically permitted by the Captain of the Port San Juan, his designated representative, or the HOVENSA Facility Port Captain. The Captain of the Port San Juan can be reached through