

2. From 8:30 p.m. until 10:30 p.m. on July 3, 2005, add temporary § 165.T01-037 to read as follows:

**§ 165.T01-037 Safety Zone; City of Lynn Fourth of July Celebration, Lynn, Massachusetts**

(a) *Location.* The following area is a safety zone:

All waters of Nahant Bay within a 400 yard radius of the fireworks barge site, at approximate position 42°27.686' N, 070°55.101' W.

(b) *Effective date.* This section is effective from 8:30 p.m. until 10:30 p.m. EDT on July 3, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Dated: May 3, 2005.

**James L. McDonald,**

*Captain, U.S. Coast Guard, Captain of the Port Boston, Massachusetts.*

[FR Doc. 05-9531 Filed 5-12-05; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CCGD11-05-006]

RIN 1625-AA11

**Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes designating the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel as a Regulated Navigation Area (RNA) for certain commercial vessels transporting oil or hazardous material as cargo. This action is necessary to reduce significant hazards to subject vessels, the port and the public that are present during periods of poor weather conditions. This RNA includes criteria for when the bar would close, notice requirements,

and procedures for waiver requests for vessels transporting oil or certain dangerous cargoes in bulk within Humboldt Bay.

**DATES:** Comments and related material must reach the Coast Guard on or before July 12, 2005.

**ADDRESSES:** You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. 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 this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Doug Ebberts, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-2770.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CCGD11-05-006), 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. If you would like to know that your submission 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 proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

**Background and Purpose**

Because Humboldt Bay has a breaking bar, a narrow entrance channel, and no

general anchorages within the bay, transits of this area present significant hazards to vessels carrying oil or hazardous material as cargo. The potential hazards to the subject vessels and the consequences of casualties involving commercial vessels carrying oil or hazardous material as cargo warrant special procedures to reduce the potential for a collision or grounding and any subsequent release of a cargo covered by this regulation.

Prior to the issuance of this proposed rule, the COTP issued several advisories addressing safe entry procedures for vessels transporting cargoes of oil or other hazardous material in the Humboldt Bay area. The most recent was a COTP Advisory put into effect in June of 1998 (COTP Advisory 01-98). This advisory included policies for when the bar would be closed to specified vessel traffic, notice requirements, vessel escort policies, and addressed parameters and procedures for waiver requests. In August of 2004, representatives from the Coast Guard Marine Safety Office San Francisco Bay met with Humboldt Bay stakeholders to review COTP Advisory 01-98. In attendance at this meeting were representatives from the California State Department of Fish and Game's Office of Oil Spill Prevention and Response, Humboldt Bay Coast Guard units, and local oil tank vessel operators. The COTP determined that although the policies contained within the COTP Advisory were appropriate, a rulemaking was needed to clearly establish the Coast Guard's authority to enforce them. In addition, it was decided that because Coast Guard Group Humboldt Bay is located near the Humboldt Bay Bar, the Group Commander would be better equipped to make timely judgments on bar conditions and to enforce this RNA. Therefore, the authority to enforce this RNA is being delegated to the Commanding Officer of Group Humboldt Bay.

In this rulemaking, the Coast Guard proposes to designate an area around the Humboldt Bay Bar as an RNA for the following purposes: (1) To establish the Coast Guard's authority to prohibit vessels carrying oil or hazardous material as cargo from crossing the bar during unsafe conditions, (2) to establish waiver, notice, and vessel escort policies, and (3) to delegate the authority for enforcing these regulations to the Humboldt Bay Group Commander.

**Discussion of Proposed Rule**

This proposed rule would designate the Humboldt Bay Bar Channel and the

Humboldt Bay Entrance Channel as an RNA for the purpose of regulating vessels transporting cargoes of oil or hazardous material. The potential hazards associated with these products are serious enough to justify special procedures to reduce the possibility of a collision or grounding during periods of poor weather, which could lead to a release of the materials covered by this proposed regulation. The proposed regulation would help to ensure the safety of mariners, the public, the port, and the environment by establishing requirements and procedures regarding: (1) Notice of intent to cross the bar, (2) when the bar would be closed to certain vessels due to weather conditions, (3) waivers, and (4) vessel escorts.

If the owner, master, agent, or person in charge of a vessel to which the proposed regulation would apply wants to obtain a waiver to cross the bar when it is closed, the proposed regulation states that a waiver can be requested up to four hours in advance of crossing the bar and would be considered for approval by the Group Commander, or his designated representative, on a case-by-case basis. As a general rule waivers would only be granted when the following conditions exist: (1) Proper permission to cross has been received, (2) sea conditions at the bar are less than 6 feet, (3) winds at the bar are less than 30 knots, (4) the transit will take place during daylight hours, (5) the vessel has only a single tow or no tow, and (6) the visibility at the bar is greater than 1,000 yards.

Deviations from the procedures and requirements of this proposed rule would be prohibited unless specifically authorized by the Group Commander. Vessels or persons violating this section may be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the regulations described herein, is punishable by civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment from 5 to 10 years and a maximum fine of \$250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation also faces imprisonment from 10 to 25 years.

The Group Commander would enforce this regulation and would have the authority to take steps necessary to ensure the safe transit of vessels in Humboldt Bay. The Group Commander can enlist the aid and cooperation of

any Federal, State, county, and municipal agency to assist in the enforcement of the regulation.

In addition to this Notice of Proposed Rulemaking (NPRM), a Temporary Final Rule (TFR) was published on March 9, 2005, in the **Federal Register** (70 FR 11546), temporarily establishing regulations to address the issues detailed in this NPRM. The TFR will allow the Coast Guard to regulate vessels carrying oil or certain dangerous cargoes across the Humboldt Bay bar as specified in this NPRM while the public comment period established by this NPRM is in place. Once the comment period is over, the COTP intends to draft a final rule.

### Regulatory Evaluation

This proposed 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation would not be significant for the following reasons: (1) Very few vessels carrying oil or certain dangerous cargoes transit the Humboldt Bay area, and (2) those vessels carrying oil or hazardous material as cargo have been complying with the COTP advisories that established the same procedures that are being proposed in this regulation. Therefore, this proposed rule would be a continuation of the already established policy of monitoring the entrance and departure of the above-mentioned vessels. In addition, vessels will continue to be allowed to enter on a case-by-case basis with prior permission of the Group Commander, or his designated representative.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The effect of this rule on small entities would not be significant for the following reasons: (1) Very few vessels carrying oil or hazardous material as cargo transit the Humboldt Bay area, and (2) those vessels carrying oil or hazardous material as cargo have been complying with the COTP advisories that established the same procedures that are being established by this regulation. In addition, the proposed regulations would still allow the regulated vessels to complete transits of the bar under favorable weather conditions, and the Group Commander would continue to grant entrance waivers on a case-by-case basis.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Doug Ebberts, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-2770. 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.

### Collection of Information

This proposed 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 proposed 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 proposed 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 proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed 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 proposed 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.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed 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 because it would establish an RNA.

A draft “Environmental Analysis Check List” and a draft “Categorical Exclusion Determination” (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 § 165.1195 to read as follows:

#### § 165.1195 Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, California.

(a) *Location.* The Regulated Navigation Area (RNA) includes all navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, Humboldt Bay, California.

(b) *Definitions.* As used in this section—

*COTP* means the Captain of the Port as defined in 33 CFR 1.01–30 and 3.55–20.

*Group* means Coast Guard Group Humboldt Bay.

*Group Commander* means the Commanding Officer of Coast Guard Group Humboldt Bay.

*Hazardous material* means any of the materials or substances listed in 46 CFR 153.40.

*Humboldt Bay Area* means the area described in the location section of this regulation.

*Oil* means oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

*Station* means Coast Guard Station Humboldt Bay.

*Tank vessel* means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

(c) *Applicability.* This section applies to the owners and operators of tank vessels transporting oil or hazardous material as cargo within the Humboldt Bay Area.

(d) *Regulations.*

(1) In addition to the arrival and departure notification requirements listed in 33 CFR Part 160, Ports and Waterways Safety—General, Subpart C—Notifications of “Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes”, the owner, master, agent or person in charge of a vessel to which this notice applies shall obtain permission to cross within four hours of crossing the Humboldt Bay Bar. Between 6:30 a.m. and 10 p.m. Notifications and requests for permission can be made to Station

Humboldt Bay on VHF-FM Channel 16, or at (707) 443-2213. If between 10 p.m. and 6:30 a.m., or if unable to reach the Station, notifications and requests for permission can be made directly to Group Humboldt Bay on VHF-FM Channel 16 or at (707) 839-6113.

(2) Permission for a bar crossing by vessels or towing vessels and their tows to which this section applies is dependant on environmental and safety factors, including but not limited to: sea state, winds, visibility, size and type of vessel or tow, wave period, time of day or night, and tidal currents. The final decision to close the bar rests with Humboldt Bay Group Commander or his designated representative. Humboldt Bay Bar Channel crossings by vessels subject to this section will generally not be permitted unless all of the following conditions exist: proper permission to cross has been received, sea conditions at the bar are less than 6 feet, winds at the bar are less than 30 knots, the transit will take place during daylight hours, the vessel has only a single tow or no tow, the visibility at the bar is greater than 1,000 yards, and the vessel and tow are in proper operating condition.

(3) If the bar is closed to vessels to which this section applies, waiver requests will be accepted within four hours of crossing the entrance channel. If the waiver request is made between 6:30 a.m. and 10 p.m., the request should be made to Station Humboldt Bay on VHF-FM Channel 16, or at (707) 443-2213. If between 10 p.m. and 6:30 a.m., or if unable to reach the Station, the request can be made directly to Group Humboldt Bay on VHF-FM Channel 16 or at (707) 839-6113. Waiver requests must be made by the vessel master and must provide the following: a description of the proposed operation, the conditions for which the waiver is requested, the reasons for requesting the waiver, the reasons that the requester believes the proposed operation can be accomplished safely, and a callback phone number. The Station or Group Watchstander receiving the request will brief the Officer in Charge of the Station who will then brief the Group Commander. The authority to grant waivers rests with the Group Commander or his designated representative.

(4) In addition to the requirements in paragraphs (d)(1)-(3) of this section, vessels transporting liquefied hazardous gasses or compressed hazardous gasses in bulk as cargo into or out of Humboldt Bay are required to be aided by two assist tugs. If the vessel carrying the gasses is towed, the assist tug requirement is in addition to the towing tug. The assist tugs shall escort the

vessel through its transit and must be stationed so as to provide immediate assistance in response to the loss of power or steering of the cargo vessel, its towing tug, or loss of control over the tow.

(5) Vessels to which this section applies may be required by the Group Commander or his designated representative to be escorted by a Coast Guard vessel during their transit. In addition, if a vessel master, agent, or pilot has concerns about the safety of a vessel's transit through the Humboldt Bay Entrance Channel, a Coast Guard escort may be requested. Requests for an escort should be directed to Station on VHF-FM channel 16 or at (707) 443-2213 between 6:30 a.m. and 10 p.m., or to Group on VHF-FM channel 16 or at (707) 839-6113 if between 10 p.m. and 6:30 a.m.

(e) *Enforcement.* Acting as a representative of the Captain of the Port, the Humboldt Bay Group Commander will enforce this regulation and has the authority to take steps necessary to ensure the safe transit of vessels in Humboldt Bay. The Group Commander can enlist the aid and cooperation of any Federal, State, county, and municipal agency to assist in the enforcement of the regulation. All persons and vessels shall comply with the instructions of the Group Commander or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 25, 2005.

**Kevin J. Eldridge,**  
Rear Admiral, U.S. Coast Guard, District  
Commander Eleventh Coast Guard District.  
[FR Doc. 05-9530 Filed 5-12-05; 8:45 am]  
**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD09-05-014]

RIN 1625-AA87

#### Security Zone; Duluth Harbor, Duluth, MN

AGENCY: Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary security zone in Duluth's inner harbor for the Commissioning ceremony of the Coast Guard Cutter ALDER. The security zone is necessary to ensure the security of dignitaries attending this ceremony on June 10, 2005. The security zone is intended to restrict vessels from a portion of Duluth Harbor in Duluth, Minnesota.

**DATES:** Comments and related material must reach the Coast Guard on or before June 2, 2005.

**ADDRESSES:** You may mail comments and related material to U.S. Coast Guard Marine Safety Office Duluth, 600 South Lake Ave, Canal Park, Duluth, Minnesota 55802. U.S. Coast Guard Marine Safety Office (MSO) Duluth maintains the public docket for this rulemaking. You may also submit comments electronically to [djustis@msoduluth.uscg.mil](mailto:djustis@msoduluth.uscg.mil). 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 this docket and will be available for inspection or copying at the U.S. Coast Guard Marine Safety Office Duluth, 600 South Lake Ave, Canal Park, Duluth, Minnesota 55802, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Greg Schultz, U.S. Coast Guard Marine Safety Office Duluth, at (218) 720-5285.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09-05-014), 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. You may also submit comments electronically to [djustis@msoduluth.uscg.mil](mailto:djustis@msoduluth.uscg.mil). If you would like to know that 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 proposed rule in view of them.