

■ 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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.

■ 2. Add § 165.T08–0005 to read as follows:

§ 165.T08–0005 Security Zone; Freeport LNG Basin, Freeport, TX.

(a) *Location.* The security zone includes all waters, from surface to bottom, shoreward of a line drawn between the point at 28°56'25" N, 095°18'13" W, and the western point at 28°56'28" N, 095°18'31" W.

(b) *Definitions.* For the purposes of this section:

Designated Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Houston-Galveston, to assist in the enforcement of the security zone.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Houston-Galveston or a designated representative.

(2) Entry into or remaining in the security zones described in paragraph (a) of this section is prohibited for all vessels except:

(i) Commercial vessels operating at the waterfront facilities within these security zones;

(ii) Commercial vessel transiting directly to or from waterfront facilities within these security zones;

(iii) Vessels providing direct operational/logistic support to commercial vessels within these security zones;

(iv) Vessels operated by the port authority or by facilities located within these security zones; and

(v) Vessels operated by federal, state, county, or municipal agencies;

(3) All persons and vessels within the security zone must comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel.

(4) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Houston-Galveston, or a

designated representative. They may be contacted at "Sector Houston-Galveston" on VHF-FM Channel 16, or by phone at (713) 671-5113.

(5) All persons and vessels 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.

Dated: January 15, 2009.

William J. Diehl,

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

[FR Doc. E9-6818 Filed 3-26-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2009-0006]

RIN 1625-AA87

Temporary Moving Security Zone; Freeport Channel Entrance, Freeport, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones for certain vessels, for which the Captain of the Port, Houston-Galveston, deems enhanced security measures necessary on a case-by-case basis. These moving security zones would extend 1,000 yards ahead and astern and 500 yards on each side of certain vessels, which will display the international signal flag or pennant number five to signal a security zone is established around the vessel. The moving security zone may commence at any point after certain vessels bound for the Port of Freeport enter the U.S. territorial waters (12 nautical miles) in the Captain of the Port Houston-Galveston zone. These security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. Unless exempted under this rule, entry into or movement within these security zones would be prohibited without permission from the Captain of the Port Houston-Galveston.

DATES: This rule is effective from 12 p.m. (noon) on January 15, 2009 until 12 a.m. on April 31, 2009.

ADDRESSES: Documents indicated in this preamble as being available in this docket, are part of docket [USCG-2009-0006] and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0006 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Marine Safety Unit Galveston, 3101 FM 2004, Texas City, TX 77591, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cliff Harder, Marine Safety Unit Galveston, Texas, at (409) 978-2705. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

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, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to reduce potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within the zones.

Background and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels; to enhance security, the Captain of the Port Houston-Galveston is establishing temporary moving security zones around escorted vessels.

This rule would establish distinct moving security zones that may commence at any point after certain vessels bound for the Port of Freeport enter the 12-nautical mile U.S. territorial waters in the Captain of the Port Houston-Galveston zone. These zones would be established to protect waterfront facilities, persons, and vessels from subversive or terrorist acts.

Vessels operating within the Captain of the Port Houston-Galveston zone are potential targets of terrorist attacks, or potential launch platforms for terrorist attacks on other vessels, waterfront facilities, and adjacent population centers.

Due to the potential for terrorist attacks, this rule would allow the Captain of the Port to create moving security zones around certain vessels as deemed necessary, on a case-by-case basis. All vessels around which a security zone is deemed necessary will display the international signal flag or pennant number five, to signal that there is a security zone established around the vessel. By limiting access to these areas, the Coast Guard is reducing potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within these security zones. Vessels having a need to enter these security zones must obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry.

Discussion of Rule

The Coast Guard is establishing moving security zones for certain vessels, for which the Captain of the Port Houston-Galveston deems enhanced security measures necessary on a case-by-case basis. These moving security zones will be activated for certain vessels within the Captain of the Port Houston-Galveston zone commencing at U.S. territorial waters through the Freeport Entrance Channel, extending from the surface to the sea floor. These moving security zones are established as follows: 1,000 yards ahead and astern and 500 yards on each side of certain vessels while in transit. Unless exempted under this rule, these moving security zones would prohibit entry into or movement within this portion of the Captain of the Port Houston-Galveston zone without Captain of the Port authorization. These security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature.

All vessels not exempted under this rule would be prohibited from entering these security zones unless authorized by the Captain of the Port Houston-Galveston or his designated representative. In Houston, vessels can contact the Captain of the Port Houston-Galveston through Vessel Traffic Service Houston/Galveston on VHF Channel 5A, by telephone at 713-671-5103, or by facsimile at 713-671-5159. In Freeport, vessels can contact the Captain of the Port Houston-Galveston through Marine

Safety Unit Galveston, by telephone at 409-978-2700, or by facsimile at 409-978-2671. This rule is effective from 12 p.m. (noon) on January 15, 2009 until 12 a.m. on April 31, 2009.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The basis of this finding is that the duration of the security zones is limited in nature and would not create undue delay to vessel traffic in and around the Port of Freeport. Additionally, any other vessel wishing to enter the security zone may request permission to do so.

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 would not have a significant economic impact on a substantial number of small entities.

This rule would not have a significant economic impact on a substantial number of small entities for the following reason: The duration of the security zones is limited in nature and would not create undue delay to vessel traffic in and around the Port of Freeport.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Cliff Harder at 409-978-2705. 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 rule would call 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2, figure 2–1, paragraph (34)(g) of the Instruction. Paragraph (34)(g) covers regulations establishing, disestablishing, or changing security zones. This rule involves temporarily establishing a

security zone in the Captain of the Port Houston-Galveston zone.

Neither an environmental assessment nor an environmental impact statement is required. An "Environmental Analysis Check List" and a categorical exclusion 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 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; 3306; 3706; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T818 to read as follows:

§ 165.T818 Moving Security Zones for Certain Vessels in Freeport Entrance Channel, Freeport, Texas.

(a) *Location.* The following areas are security zones: All waters within the Captain of the Port Houston-Galveston Zone commencing at U.S. territorial waters through the Freeport Entrance Channel, from surface to bottom, one thousand (1,000) yards ahead and astern and five hundred (500) yards on each side of any vessel within the 12 nautical mile U.S. Territorial Waters in the Captain of the Port Houston-Galveston zone that displays the international signal flag or pennant number five.

(b) *Definitions.* For the purposes of this section:

Designated Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Houston-Galveston, to assist in the enforcement of the security zone.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Houston-Galveston or a designated representative.

(2) Entry into or remaining in the security zones described in paragraph (a) of this section is prohibited for all vessels except:

(i) Moored vessels or vessels anchored in a designated anchorage area. A moored or an anchored vessel in a security zone must remain moored or

anchored unless it obtains permission from the Captain of the Port Houston-Galveston to do otherwise;

(ii) Commercial vessels operating at the waterfront facilities within these security zones;

(iii) Commercial vessel transiting directly to or from waterfront facilities within these security zones;

(iv) Vessels providing direct operational/logistic support to commercial vessels within these security zones;

(v) Vessels operated by the port authority or by facilities located within these security zones; and

(vi) Vessels operated by federal, state, county, or municipal agencies;

(3) All persons and vessels within the moving security zone must comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel.

(4) To request permission as required by these regulations, contact the Sector Houston-Galveston Command Center by telephone at 713–671–5113. In Freeport, vessels should contact the Captain of the Port Houston-Galveston's designated representative for the moving security zone on VHF Channel 16, or by telephone at 979–233–7551.

(d) *Informational broadcasts.* The Captain of the Port Houston-Galveston will inform the public when moving security zones have been established around certain vessels via Broadcast Notice to Mariners on VHF channel 16 and 13.

Dated: January 15, 2009.

William J. Diehl,

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

[FR Doc. E9–6820 Filed 3–26–09; 8:45 am]

BILLING CODE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6006–F2]

RIN 0938–AO84

Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.