

Dated: April 27, 2009.

**Fred M. Rosa, Jr.,**

*Rear Admiral, U.S. Coast Guard Commander,  
Fifth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1013]

RIN 1625-AA87

#### Security Zones; Escorted Vessels, Mobile, AL, Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is making permanent an interim rule establishing a security zone around any vessel being escorted by one or more Coast Guard assets, or other Federal, State, or local law enforcement assets, within the Captain of the Port Zone Mobile, AL. This action is necessary to ensure the safe transit and mooring of escorted vessels as well as the safety and security of personnel and port facilities. No vessel or person is allowed inside the security zone unless authorized by the Captain of the Port Mobile, AL or a designated representative.

**DATES:** This rule is effective June 11, 2009.

**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 docket USCG-2008-1013 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-2008-1013 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying 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 Coast Guard Sector Mobile Prevention Office located on South Broad Street, Mobile, Alabama 36615, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call LT Jonathan Mangum at Coast Guard Sector

Mobile Prevention Department, at 251-441-5940. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On November 13, 2008, we published an Interim Rule with request for comments (IR) entitled Security Zones; Escorted Vessels, Mobile, AL, Captain of the Port Zone in the **Federal Register** (73 FR 67104). We received comments from three commenters. No public meeting was requested, and none was held.

##### Background and Purpose

The terrorist attacks of September 11, 2001, heightened the need for development of various security measures throughout the seaports of the United States, particularly around vessels and facilities whose presence or movement creates a heightened vulnerability to terrorist acts; or those for which the consequences of terrorist acts represent a threat to national security. The President of the United States found that the security of the United States is and continues to have been endangered following the attacks of September 11 (E.O. 13273, 67 FR 56215 (Sep. 3, 2002), and 73 FR 54489 (Sep. 18, 2008)). Additionally, national security and intelligence officials continue to warn that future terrorist attacks are likely. The ports within the Captain of the Port (COTP) Zone Mobile, AL, as described in 33 CFR 3.40-10, frequently receive vessels that require additional security, including, but not limited to, vessels carrying sensitive Department of Defense cargoes, vessels carrying dangerous cargoes, and foreign naval vessels. The COTP has determined that these vessels have a significant vulnerability to subversive activity by other vessels or persons, or, in some cases, themselves pose a risk to a port and the public within the COTP Zone. This rule enables the COTP Mobile to provide effective port security, while minimizing the public's confusion and easing the administrative burden of implementing separate temporary security zone rules for each escorted vessel.

##### Discussion of Comments and Changes

All three commenters expressed concern that a 500-yard security zone would exceed the width of some navigable waters in the COTP Zone and thereby effectively shutdown navigation. These comments recognized that the COTP Mobile intends to permit vessels to transit through the zone if

such transit can be done safely, but the commenters expressed concern that the volume of maritime traffic in some of the waterways may create congestion and delays. We appreciate these concerns, but it is imperative that the law enforcement assets on-scene have an adequately sized buffer zone around the vessel to increase their ability to distinguish threats and to respond to threats that materialize. We also do not believe that a 500-yard security zone, even if extending bank-to-bank, will appreciably affect commercial navigation. Law enforcement assets on-scene will be designated by the COTP Mobile to allow safe transit through the zone, which is now routinely done for the many safety and security zones throughout the COTP Mobile zone without undue impact on navigation. The IR and this Final Rule establish a permanent mechanism for vessels requiring escort instead of using the ad-hoc security zone processes that had been COTP Mobile's past practice, and in doing so provide law enforcement assets with the appropriate legal basis and tools to ensure the security of the marine transportation system. Accordingly, this Final Rule does not change the size of the security zones established in the IR.

Two commenters expressed concern with the IR's provisions that allow, in some instances, the continuation of a security zone while the vessel is moored, even when law enforcement assets are not present. These commenters explained that without law enforcement assets on-scene the public would not be aware of the existence of the security zone, and there would be no efficient mechanism for obtaining approval from the COTP Mobile to transit through the zone. In instances where the security zone will continue without law enforcement assets present, the IR requires continued notice to the public through visible signs and markings and a Broadcast Notice to Mariners. We believe these requirements ensure sufficient notice to the public regarding the establishment of the security zone. However, we do agree that the lack of law enforcement assets on-scene in such cases could decrease the COTP Mobile's response to requests to transit through the zone in circumstances where that zone extends bank-to-bank or well into a navigable channel. Therefore, in the final rule, we are amending the definition of an *escorted vessel* to continue to permit the continuation of a security zone under this Final Rule for an escorted vessel that is moored, but only when Coast Guard or other Federal, State, or local

law enforcement assets remain on-scene to enforce the zone. Under the final rule, notice is provided to the public that the security zone remains in effect around a moored vessel through the continued presence of these properly marked law enforcement assets and the Broadcast Notice to Mariners. This change from the interim rule to the final rule does not constrain COTP Mobile from taking any additional regulatory or other action that may be deemed necessary to ensure the safety and security of the marine transportation system. Continuing a security zone around a moored vessel is unlikely to occur in most cases, further minimizing impacts to navigation, but the COTP Mobile must retain the flexibility to continue the security zone by maintaining the presence of law enforcement assets while the vessel is moored to address emerging threats without having to undertake additional rulemaking.

One commenter questioned how the public will know when a security zone that remains around a moored vessel ends. While not specific, we interpret this comment to relate to those situations where no law enforcement assets remained on-scene to continue to enforce the zone. We resolved this issue with the change noted above: The security zone around an escorted vessel while moored will remain in effect only when Coast Guard or other Federal, State, or local law enforcement assets remain on-scene to enforce the zone. In the final rule, we modified paragraph (e) *Notice of Security Zone* to also reflect this change. In paragraph (e) we note that public notice about the existence of a security zone will be continuously broadcast, typically at 30-minute intervals, for the duration of the security zone, and escorted vessels will be identified by the presence of law enforcement assets. Thus, under the final rule, when all law enforcement assets depart the scene, the security zone ends, and the Broadcast Notice to Mariners will terminate, whether the vessel is underway or moored.

One commenter proposed that we provide 12-hours advance notice of a security zone and disseminate this notice through a Marine Safety Information Broadcast (MSIB). We did not adopt this proposal for several reasons. Primarily, giving such broad and early notice to the public increases the security risk to the escorted vessel, as well as the Coast Guard and other agency escort assets, by providing advance targeting information to potential terrorist threats. Also, many times the Coast Guard may not know until shortly before a vessel's arrival that an escort is required, making 12-

hour advance notice impractical. We believe that the visual notice provided by the presence of the properly marked law enforcement escorts, usually undertaken well before the vessel's arrival inside the port environment, as well as the advance notice provided by the Broadcast Notice to Mariners, gives ample awareness to the public of the security zone.

Another commenter proposed that non-Coast Guard assets escorting vessels and enforcing the security zone be placed under Coast Guard command responsibility. We disagree. Each law enforcement agency supporting the escort and ensuring the integrity of the security zone will be acting under its own organic legal authority. However, we will ensure that the COTP has adequate communications with all law enforcement assets involved in the escort to ensure adequate Coast Guard oversight and response and appropriate COTP engagement.

Finally, one commenter questioned whether the Coast Guard had the resources to sustain a continuous presence on-scene to enforce a security zone around a moored vessel. Concerns about Coast Guard capacity, and other law enforcement asset capabilities, are beyond the scope of this rulemaking.

#### **Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### **Regulatory Planning and Review**

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 is unnecessary. The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Ports within the Captain of the Port Zone Mobile. Vessels requiring transit through the security zone also may be permitted to do so with approval by COTP Mobile or a designated representative.

#### **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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in the vicinity of escorted vessels on the navigable waters of the Captain of the Port Zone, Mobile, Alabama. This rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, encompassing the escorted vessel and a 500-yard radius around the vessel only. In most cases, the security zones will leave ample space for vessels to navigate around them. If not, and security conditions permit, the COTP will attempt to provide flexibility for individual vessels to transit through the zones as needed. Therefore, the security zones will not significantly impact commercial and passenger vessel traffic patterns. Additionally, mariners will be given advance notice of all security zones created under this rule via broadcast notice to mariners.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the IR 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.

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). 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 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. Although this rule will 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 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.

### 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 does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. Paragraph (34)(g) covers regulations establishing, disestablishing, or changing security zones. This rule involves establishing security zones around escorted vessels in the COTP Zone Mobile, AL. An environmental analysis checklist and a 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.

■ Accordingly, the interim rule amending 33 CFR part 165, which was published at 73 FR 67107 on November 13, 2008, is adopted as a final rule with the following changes:

### 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, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.836, as follows:

■ a. In paragraph (a), revise the definition of “escorted vessel” as set forth below;

■ b. In paragraph (a), in the definition of “minimum safe speed”, remove the two occurrences of the phrase “for navigation”;

■ c. In paragraph (c), remove the word “in” from the last sentence and add in its place the phrase “described in paragraph (b) of”;

■ d. In paragraph (d)(1), add the phrase “of this part” after “§ 165.33”;

■ e. Revise paragraph (e) to read as set forth below.

The additions and revisions read as follows:

#### § 165.836 Security Zone; Escorted Vessels, Mobile, Alabama, Captain of the Port.

(a) \* \* \*

*Escorted vessel* means a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State, or local law enforcement agency assets clearly identifiable by flashing lights, vessel markings, or with agency insignia as follows: Coast Guard surface or air asset displaying the Coast Guard insignia. State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency. *Escorted vessel* also means a moored or anchored vessel that was escorted by Coast Guard assets or other Federal, State, or local law enforcement agency assets to its present location and some or all of those properly marked assets

remain on-scene to continue to enforce the security zone.

\* \* \* \* \*

(e) *Notice of security zone.* The COTP will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by broadcast notices to mariners, normally issued at 30-minute intervals while the security zones remains in effect. Escorted vessels will be identified by the presence of Coast Guard assets or other Federal, State or local law enforcement agency assets.

\* \* \* \* \*

Dated: March 27, 2009.

**E.M. Stanton,**

*Captain, U.S. Coast Guard Captain of the Port Mobile.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AM98

#### Reimbursement for Interment Costs

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations on burial benefits to incorporate a change made by the Dr. James Allen Veteran Vision Equity Act of 2007. Specifically, this document eliminates a 2-year time limitation for States to file with VA claims for reimbursement of interment costs. The removal of this time limitation is necessary to conform the regulations to recent legislation and governing statutes.

**DATES:** *Effective Date:* This amendment is effective May 12, 2009.

*Applicability Date:* In accordance with section 202(a)(2) of the Dr. James Allen Veteran Vision Equity Act of 2007, this amendment will apply with respect to interments and inurnments of unclaimed remains of deceased veterans occurring on or after October 1, 2006. This amendment will apply to all other interments and inurnments occurring on or after the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Thomas Kniffen, Chief of Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9725.

**SUPPLEMENTARY INFORMATION:** Section 3.1604 of title 38, Code of Federal Regulations, governs VA burial benefits when non-VA sources have paid or contributed to burial expenses. Section 3.1604(d) governs payment of the plot or interment allowance to a State or political subdivision of a State. Section 3.1604(d)(2) governs claims for the plot or interment allowance, and the second sentence in § 3.1604(d)(2) requires that such a claim be filed with VA within 2 years after the permanent burial or cremation of the body. Section 202(a) of the Dr. James Allen Veteran Vision Equity Act of 2007, Public Law 110-157, repealed this second sentence as it pertains to unclaimed remains of a deceased veteran.

Although the legislation removed the 2-year time limit only for claims regarding the unclaimed remains of a deceased veteran, we have decided to eliminate the 2-year time limit on all claims for plot or interment allowances.

Currently, 38 U.S.C. 2304 contains the only statutory time limitation on the filing of an application for burial benefits within title 38, United States Code. Section 2304 requires that applications for payment of the burial allowance for non-service-connected deaths under 38 U.S.C. 2302 must be filed within 2 years after the burial of the veteran. However, this time limit does not extend to the plot or interment allowance authorized by 38 U.S.C. 2303(b), the benefit § 3.1604(d)(2) governs. Therefore, we are removing the second and the third sentences of current § 3.1604(d)(2), which limit the time for filing claims for the plot or interment allowance under section 2303(b).

#### Administrative Procedure Act

This final rule merely conforms VA regulations governing burial benefits to a recent legislative change and relieves a restriction (eliminates a time limit). Accordingly, there is good cause for dispensing with the notice-and-comment and delayed-effective-date procedures otherwise required by 5 U.S.C. 553 because such procedures are impractical, unnecessary, and contrary to the public interest.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are

defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The Secretary does acknowledge that this final rule may affect some States and political subdivisions of States, including a few political subdivisions of States that may be considered small entities; however, the economic impact is not significant. This final rule does not impose any new requirements on States or political subdivisions of States in order to receive the burial benefits governed by 38 CFR 3.1604. It merely eliminates the time restriction on when they may file for such benefits. To the extent that small entities are affected, the impact of this amendment is both minimal and entirely beneficial. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the