

section, vessels less than 3,000 horsepower while engaged in towing operations are not authorized to transit that portion of the Hudson River south of the Troy Locks when ice thickness reaches eight inches or greater.

(2) All Coast Guard assets enforcing this regulated navigation area can be contacted on VHF marine band radio, channel 13 or 16. The captain of the Port can be contacted at telephone number (718) 354-4356.

(3) All persons desiring to transit through a portion of the regulated area that has operating restriction in effect must contact the COTP at telephone number (718) 354-4356 or on VHF channel 13 or 16 to seek permission prior to transiting the affected regulated area.

(5) The COTP will notify the public of any changes in the status of this regulated navigation area by Marine Safety Information Broadcast on VHF-FM marine band radio, channel 22A (157.1 MHz).

Dated: February 5, 2010.

**Joseph L. Nimmich,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0125]

RIN 1625-AA87

#### Security Zone; Freeport Channel Entrance, Freeport, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established 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 extend 1,000 yards ahead and astern and 500 yards on each side of certain vessels. 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 COTP Houston-Galveston.

**DATES:** This rule is effective March 29, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0125 and are available online by going to <http://www.regulations.gov>, inserting USCG-2008-0125 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Lieutenant Commander Kevin Ivey, Marine Safety Unit Galveston, Coast Guard; telephone 409-978-2704, e-mail [Kevin.L.Ivey@uscg.mil](mailto:Kevin.L.Ivey@uscg.mil). 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 April 30, 2009, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; Freeport Channel Entrance, Freeport, TX in the **Federal Register** (33 FR 19923). We received two comments on the proposed rule. No parties requested public meetings and none were held.

##### 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 has established moving security zones around escorted vessels.

This rule establishes 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 are 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. 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 zones must obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry.

#### Discussion of Comments and Changes

The Coast Guard received two comments on the proposed rule. One comment was in regard to clarification of whether the security zone pertained to all ships or just LNG ships. The security zone is not established solely for LNG ships. The second comment made was in regard to clarification of whether the security zones pertain to the land as well as the water. The security zone covers only the water, and not the land.

We made no changes to the rule based on these comments. The Coast Guard is implementing the rule as it was proposed in the notice of proposed rulemaking (33 FR 19923).

#### 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 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.

#### 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), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

#### 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.

#### 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 023–01 and Commandant Instruction M16475.1D, 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 because this rule involves a regulation establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

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.

■ 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, 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. Added new § 165.818 to read as follows:

#### § 165.818 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 (1000) yards ahead and astern and five hundred (500) yards on each side of any vessel that has a moving security zone established around it.

(b) *Regulations.* Entry into or remaining in the zones described in

paragraph (a) of this section is prohibited unless authorized as follows:

(1) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain moored or anchored if they come within a security zone described in paragraph (a) of this section. 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 to do otherwise.

(2) Commercial vessels operating at the waterfront facilities within these zones.

(3) Commercial vessel transiting directly to or from waterfront facilities within these zones.

(4) Vessels providing direct operational/logistic support to commercial vessels within these zones.

(5) Vessels operated by the port authority or by facilities located within these zones.

(6) Vessels operated by Federal, State, county, or municipal agencies.

(7) 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. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(8) 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's designated on-scene representative for the moving security zone on VHF Channel 16, or by telephone at (979) 233-7551.

(c) *Certain vessel definition.* For the purposes of this section, certain vessel means any vessel within the 12 nautical mile U.S. Territorial Waters and bound for the Port of Freeport that is deemed to be in need of a moving security zone by the Captain of the Port, Houston-Galveston for security reasons. In making this determination, the Captain of the Port considers all relevant security factors, including but not limited to the presence of unusually harmful or hazardous substances and the risk to population or infrastructure.

(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. Vessels that have a moving security zone in place around them will display the international signal flag or pennant number five.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: December 28, 2009.

**M.E. Woodring,**

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

[FR Doc. 2010-3832 Filed 2-24-10; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0501]

RIN 1625-AA87

#### Security Zones; Brazos River, Freeport, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established four permanent security zones in the Brazos River in Freeport, Texas. These security zones are being put in place to protect vessels, waterfront facilities, and surrounding areas from destruction, loss, or injury caused by terrorism, sabotage, subversive acts, accidents, or incidents of a similar nature. Entry into these zones is prohibited except by permission of the Captain of the Port Houston-Galveston.

**DATES:** This rule is effective March 29, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0501 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0501 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Lieutenant junior grade Margaret Brown, Coast Guard Sector Houston-Galveston; telephone (713) 678-9001, e-mail [margaret.a.brown@uscg.mil](mailto:margaret.a.brown@uscg.mil). 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 24, 2009 we published a notice of proposed rulemaking (NPRM) entitled Security Zones; Brazos River, Freeport, TX in the **Federal Register** (74 FR 61305). We received no comments on the proposed rule.

### 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 has established four permanent security zones within the port of Freeport, TX.

These zones 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. The zones are in areas with a high concentration of commercial facilities that are considered critical to national security.

All vessels not exempted under 33 CFR 165.814(c) desiring to enter this zone are required to obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry. This rule is not designed to restrict access to vessels engaged, or assisting in commerce with waterfront facilities within the security zones, vessels operated by port authorities, vessels operated by waterfront facilities within the security zones, and vessels operated by Federal, State, county or municipal agencies. By limiting access to this area the Coast Guard reduces potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within the zones.

### Discussion of Comments and Changes

We received no comments on the proposed rule, published November 24, 2009. No public meeting was requested and none was held. The Coast Guard is implementing the rule as proposed, without change.

### 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