

**DEPARTMENT OF HOMELAND SECURITY**
**Coast Guard**
**33 CFR Part 165**
**[COTP Houston-Galveston-03-004]**
**RIN 1625-AA00**
**Security Zone; Houston Ship Channel and Adjacent Waterways Between Buffalo Bayou and Morgans Point, Houston, TX**
**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for the Houston Ship Channel and all associated turning basins including a portion of the San Jacinto River. This security zone is needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature performed by individuals or groups reacting to current world events. All vessels carrying Certain Dangerous Cargoes (CDCs) are prohibited from entering into, departing from or moving within the security zone unless authorized to do so by the Captain of the Port Houston-Galveston or a designated representative and escorted by a Coast Guard vessel. Additionally, vessels desiring to anchor or moor within the security zone must have permission from the Captain of the Port Houston-Galveston or a designated representative.

**DATES:** This rule is effective from 12:01 a.m. on December 25, 2003, through 6 a.m. on March 1, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Houston-Galveston-03-004] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Houston-Galveston, 9640 Clinton Dr., Houston, TX 77029 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commander (CDR) Thomas Marian, Commanding Officer, Vessel Traffic Service Houston/Galveston, Houston, TX at (713) 671-5164.

**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 an 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**. National security and intelligence officials continue to warn that future terrorist attacks against the United States interests are likely. Publishing an NPRM and delaying the rule's effective date would be contrary to public interest because immediate action is needed to protect vessels, waterfront facilities, and the public from destruction, loss, or injury due to sabotage or other subversive acts performed by individuals or groups reacting to current world events.

**Background and Purpose**

On September 11, 2001, terrorists attacked both towers of the World Trade Center and the Pentagon. The President has continued the national emergencies that he declared following those attacks (68 FR 53665, Sep. 10, 2003, continuing the emergency declared with respect to terrorist attacks; 68 FR 55189, Sep. 18, 2003, continuing emergency with respect to persons who commit, threaten to commit or support terrorism). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191, *et seq.*), that the security of the United States continues to be endangered following those terrorist attacks (E.O. 13273, 67 FR 56215, Sep. 3, 2002, security of U.S. endangered by disturbances in its international relations and such disturbances continue to endanger such relations).

In response to those terrorist acts and current international events, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. This security zone is needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature performed by individuals or groups reacting to current world events.

**Discussion of Rule**

The Captain of the Port Houston-Galveston is establishing a temporary security zone for the Houston Ship Channel between Morgans Point (that portion of the Houston Ship Channel north and west of a line drawn between Houston Ship Channel Lights 89A and 90A) and the entrance of Buffalo Bayou and adjoining waterways. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

All vessels carrying or controlling vessels carrying CDCs are prohibited from entering, leaving, or moving within the security zone unless authorized by the Captain of the Port Houston-Galveston or designated representative and escorted by a Coast Guard vessel. To minimize the potential for vessels transporting CDCs to be delayed while waiting for a Coast Guard escort, it is highly recommended that those vessels contact the COTP Houston-Galveston at least four hours prior to the anticipated time they intend to enter, depart or move within the security zone. Additionally, it is strongly encouraged that vessels carrying or controlling vessels carrying CDCs plan their transits into, out of, and through the security zone to occur between 8 a.m. and 6 p.m. daily as Coast Guard escort resources are limited during night-time periods. In Houston, vessels can contact the COTP through Vessel Traffic Service Houston/Galveston on VHF Channel 5A, by telephone at (713) 671-5103 or by facsimile at (713) 671-5159.

This rule is effective from 12:01 a.m. on December 25, 2003, through 6 a.m. on March 1, 2004.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

While vessels carrying or controlling another vessel carrying CDCs will need authorization to transit the zone, the Coast Guard expects minimal interference with or delay to their passage. Proactive measures that vessels carrying or controlling vessels carrying CDCs can take to minimize the potential for delays to occur are noted within this preamble. Notifications to the marine community will be made through broadcast notice to mariners.

This security zone is temporary in nature. The Coast Guard will issue an NPRM should it consider making this rule permanent.

**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 the Houston Ship Channel and all associated turning basins including that portion of the San Jacinto River from its mouth north to the Interstate 10 highway bridge, bounded by a line drawn between Houston Ship Channel Light 89A (LLNR-23347) and Houston Ship Channel Light 90A (LLNR-23350) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 1000 yards of connecting waterways with the exception of the San Jacinto River as set forth above between 12:01 a.m. on December 25, 2003, through 6 a.m. on March 1, 2004. This rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the section entitled Regulatory Evaluation.

If you are a small business entity and are significantly affected by this regulation please contact CDR Thomas Marian, Vessel Traffic Service Houston/Galveston at (713) 671-5164.

#### Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not 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.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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 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 this rule is not expected to result in any significant environmental impact as described in NEPA.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available where indicated under

#### ADDRESSES.

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

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08-162 is added to read as follows:

#### § 165.T08-162 Security Zone; Houston Ship Channel and adjacent waterways between Buffalo Bayou and Morgans Point, Houston, TX.

(a) *Location.* The following area is a security zone: The Houston Ship Channel and all associated turning basins including that portion of the San Jacinto River from its mouth north to the Interstate 10 highway bridge, bounded

by a line drawn between Houston Ship Channel Light 89A (LLNR-23347) and Houston Ship Channel Light 90A (LLNR-23350) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 1000 yards of connecting waterways with the exception of the San Jacinto River as set forth above.

(b) *Effective period.* This section is effective from 12:01 a.m. on December 25, 2003, through 6 a.m. on March 1, 2004.

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

(1) *Certain Dangerous Cargoes* or (CDCs) includes—

(i) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(ii) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(iii) Division 2.3 “poisonous gas”, as listed in 49 CFR 172.101 that is also a “material poisonous by inhalation” as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per vessel or barge.

(iv) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(v) A liquid material that has a primary or subsidiary classification of 6.1 “poisonous material” as listed in 49 CFR 172.101 that is also a “material poisonous by inhalation”, as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per vessel or barge when not in a bulk packaging.

(vi) Class 7, “highway route controlled quantity” radioactive material or “fissile material, controlled shipment”, as defined in 49 CFR 173.403.

(vii) Bulk liquefied chlorine gas and Bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(viii) The following bulk liquids—

(A) Acetone cyanohydrin,

(B) Allyl alcohol,

(C) Chlorosulfonic acid,

(D) Crotonaldehyde,

(E) Ethylene chlorohydrin,

(F) Ethylene dibromide,

(G) Methacrylonitrile,

(H) Oleum (fuming sulfuric acid), and

(I) Propylene oxide.

(2) *CDC Vessel* means any vessel carrying or controlling another vessel that is carrying CDCs.

(d) *Regulations.* (1) Under § 165.33, entry into, departure from, and movement within this zone by a CDC vessel is prohibited unless authorized by the Captain of the Port (COTP) Houston-Galveston or designated representative and conducted with a Coast Guard vessel escort. CDC vessels desiring to remain within the zone while moored or at anchor are prohibited from doing so without prior authorization from the COTP Houston-Galveston or designated representative.

(2) CDC vessels must request permission to enter into, depart from, move within, or remain in the security zone described in paragraph (a) of this section by contacting Vessel Traffic Service (VTS) Houston/Galveston on VHF channel 5A, by telephone at (713) 671-5103, or by facsimile at (713) 671-5159.

(3) To avoid delays while waiting for a Coast Guard escort to arrive on scene, CDC vessels should contact VTS Houston/Galveston on VHF channel 5A, by telephone at (713) 671-5103, or by facsimile at (713) 671-5159 at least 4 hours prior to the time the CDC vessel anticipates entering into, departing from, or moving within the security zone. Additionally, as escort resources are limited during nighttime periods, it is highly recommended that CDC vessels only plan to transit into, out of, or through the security zone between 8 a.m. and 6 p.m. daily.

(4) All persons and vessels must comply with the instructions of the Captain of the Port Houston-Galveston and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: December 24, 2003.

**Richard M. Kaser,**

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

[FR Doc. 04-1327 Filed 1-21-04; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Houston-Galveston-03-005]

RIN 1625-AA00

### Security Zone; Port of Texas City Channel, Turning Basin and Industrial Canal, Texas City, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for the Port of Texas City Channel, Turning Basin and Industrial Canal. This security zone is needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature performed by individuals or groups reacting to current world events. All vessels carrying Certain Dangerous Cargoes (CDCs) are prohibited from entering into, departing from or moving within the security zone unless authorized to do so by the Captain of the Port Houston-Galveston or a designated representative.

**DATES:** This rule is effective from 12:01 a.m. on January 2, 2004, through 6 a.m. March 1, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Houston-Galveston-03-005] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Houston-Galveston, 9640 Clinton Dr., Houston, TX 77029 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commander (CDR) Thomas Marian, Commanding Officer, Vessel Traffic Service Houston/Galveston, Houston, TX at (713) 671-5164.

#### 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 an 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**. National security and intelligence officials continue to warn that future terrorist attacks against the United States interests are likely. Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels, waterfront facilities, and the public from destruction, loss, or injury due to sabotage or other subversive acts performed by individuals or groups reacting to current world events.

#### Background and Purpose

On September 11, 2001, terrorists attacked both towers of the World Trade Center and the Pentagon. The President has continued the national emergencies that he declared following those attacks