

Issued in Washington, DC, this 4th day of March, 2005.

**Elaine L. Chao,**

*Chairman, Board of Directors, Pension Benefit Guaranty Corporation.*

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

**Philip R. Hertz,**

*Secretary, Board of Directors, Pension Benefit Guaranty Corporation.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CCGD11-04-010]

RIN 1625-AA11

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is 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. The RNA codifies existing Captain of the Port San Francisco Bay (COTP) policies for vessels transporting oil or certain dangerous cargoes in bulk within Humboldt Bay.

**DATES:** This rule is effective from April 8, 2005 to October 11, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of the docket [CCGD11-04-010] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, 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, at (510) 437-2770.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect the maritime public and the environment from the hazards associated with these cargoes and the extremely dangerous marine conditions at the Humboldt Bay Bar. A separate NPRM to make permanent the regulations in this TFR will be published to allow public comment prior to the issuance of a final rule to make these regulations permanent.

### 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 the subsequent release of a cargo covered by this regulation.

Prior to the issuance of this TFR, 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, the policies and procedures should be codified into Federal Regulation 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 regulated navigation area. Therefore, the authority to enforce this regulated navigation is being delegated to the Commanding Officer of Group Humboldt Bay.

In this particular rulemaking, the Coast Guard is designating an area around the Humboldt Bay Bar as a 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 Rule

This rule designates 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 regulation. The regulation helps 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 regulation applies wants to obtain a waiver to cross the bar when it is closed, a waiver can be requested within 4 hours of crossing the bar and will be considered for approval by the Group Commander, or his designated representative, on a case-by-case basis. As a general rule waivers will 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 rule are prohibited unless specifically authorized by the Group Commander or his designated representative. 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, acting as a representative of the Captain of the Port, San Francisco Bay, 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.

#### 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).

The effect of this regulation is not 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. Therefore, this rule is 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 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 is not expected to have a significant economic impact on a substantial number of small entities. The effect of this rule on small entities will 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. Currently, the only entity that would be routinely subject to this regulation is an oil barge that makes twice-weekly transits of the Humboldt Bay Bar.

#### 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. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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 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 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 we are establishing a RNA.

A final “Environmental Analysis Checklist” and a final “Categorical Exclusion Determination” will be available for review in the docket indicated under **ADDRESSES**.

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

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, 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. Temporarily add § 165.T11–004, to read as follows:

#### § 165.T11–004 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.* These regulations apply 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 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., notification/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, notification/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 regulation 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/night, and tidal currents. The final decision to close the bar rests with Humboldt Bay Group Commander or his designated representative. At a minimum, Humboldt Bay Bar Channel crossings by vessels subject to this advisory 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 regulation 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 above requirements, 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 tow 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 regulation 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.

(f) *Effective Period.* This rule is effective from April 8, 2005 to October 11, 2005.

Dated: February 28, 2005.

**Kevin J. Eldridge,**

*Rear Admiral, U.S. Coast Guard, District Commander, Eleventh Coast Guard District.*  
[FR Doc. 05-4599 Filed 3-8-05; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-04-171]

RIN 1625-AA87 (Formerly 1625-AA00)

#### Security Zone; Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing permanent moving security

zones around escorted vessels while they are in the navigable waters of the Fifth Coast Guard District. The security zones require all vessels in a 500-yard radius around escorted vessels, to operate at the minimum speed necessary to navigate safely and prohibits any vessels from entering within 100 yards of an escorted vessel. These security zones mitigate potential terrorist acts and enhance public and maritime safety and security.

**DATES:** This rule is effective April 13, 2005.

**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 CGD05-04-171 and are available for inspection or copying at the Fifth Coast Guard District, Marine Safety Division, 431 Crawford Street, Portsmouth, Virginia, 23704 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant E.J. Terminella, Fifth Coast Guard District, at (757) 398-7783.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On December 28, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Fifth Coast Guard District" in the **Federal Register** (69 FR 77684). We did not receive any letters commenting on the proposed rule. No public meeting was requested and none was held.

##### Background and Purpose

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as Lead Federal Agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. Terrorists have demonstrated both desire and ability to use multiple means in different geographic areas to successfully carry out their terrorist missions.

During the past 3 years, the Federal Bureau of Investigation has issued several advisories to the public concerning the potential for terrorist attacks within the United States. The October 2002 attack on a tank vessel, M/V LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order

13273 of August 21, 2002 (67 FR 56215, September 3, 2002), and Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Furthermore, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. port and waterway users to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In addition to escorting vessels, a security zone is a tool available to the Coast Guard that may be used to control maritime traffic operating in the vicinity of vessels that the Coast Guard has determined need additional security measures during their transit. The District Commander has made a determination that it is necessary to establish a security zone around vessels that are escorted. This regulation, which will establish security zones around escorted vessels, will allow the COTP to safeguard escorted vessels, and reduce the possibility of a terrorist attack that might kill or injure persons or damage property in ports, harbors or waterfront facilities. Vessels that may require an escort are vessels of national security interest, such as a passenger vessel or a vessel carrying certain dangerous or hazardous cargo. These security zones around all escorted vessels during transit and while the escorted vessels are anchored, moored, or underway within the Fifth Coast Guard District will help ensure the safety of the ports and vessels in the navigable waters of the Fifth Coast Guard District.

##### Discussion of Comments and Changes

No comments were received. For purposes of clarification, however, we did revise the definition of *escorted vessel* to expressly exclude U.S. naval vessels, as defined in § 165.2015. This language was added to prevent any confusion between these zones and a Naval Vessel Protective Zone found at 33 CFR 165.2010.

##### Discussion of Rule

This rule places a 500-yard security zone around all vessels that are being escorted by a Coast Guard surface, air or Coast Guard Auxiliary asset, or by a local law enforcement agency during their transit through the Fifth Coast Guard District. Only vessels traveling at the minimum safe speed may transit in the 500-yard zone and no persons or