

(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.

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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

vessels are allowed within 100 yards of any escorted vessel, without the permission of the District Commander, Captain of the Port or their designated representatives, while the vessel is within the Fifth Coast Guard District. Persons desiring to transit within 100 yards of an escorted vessel in the Fifth Coast Guard District must contact the local Captain of the Port on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) and obtain permission to transit within 100 yards of the escorted vessel. The boundaries of the Fifth Coast Guard District are defined in 33 CFR 3.25-1. This includes territorial waters 12 nautical miles from the territorial sea baseline as defined in 33 CFR part 2 subpart B. The boundaries of the four COTP zones within the Fifth Coast Guard District are defined in § 3.25-05, Philadelphia Captain of the Port Zone; § 3.25-10, Hampton Roads Marine Inspection Zone and Captain of the Port Zone; § 3.25-15, Baltimore Captain of the Port Zone, and § 3.25-20, Wilmington Marine Inspection Zone and Captain of the Port Zone.

All persons within 500 yards of an escorted vessel are required to operate their vessels at the minimum safe speed necessary to maintain navigation in accordance with the Navigation Rules in 33 CFR Chapter I, subchapters D and E.

Stationary vessels that are moored or anchored must remain moored or anchored when an escorted vessel approaches within 100 yards of the stationary vessel. Additionally, vessels restricted in their ability to maneuver must request permission from the District Commander, Captain of the Port or a designated representative, to enter within 100 yards of an escorted vessel in order to ensure safe passage in accordance with the Navigation Rules in 33 CFR Chapter I, subparts D and E.

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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the relatively small percentage of ships that would fall within the applicability of the

regulation, the relatively small size of the limited access area around each ship, the minimal amount of time that vessels will be restricted in course or speed when the zone is being enforced, and the ease with which vessels may transit around the affected area. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the District Commander, Captain of the Port or their designated representatives.

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.

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 this 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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does 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 might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule 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. Under figure 2–1, paragraph (34)(g) of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

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. Add § 165.518 to read as follows: § 165.518 Security Zone; Waters of the Fifth Coast Guard District.

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

Designated Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander or local Captain of the Port (COTP), as defined in 33 CFR part 3, subpart 3.25, to act on his or her behalf.

Escorted vessel means a vessel, other than a U.S. naval vessel as defined in § 165.2015, that is accompanied by one or more Coast Guard assets or Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) Coast Guard Auxiliary surface asset displaying the Coast Guard Auxiliary insignia.

(3) State and/or local law enforcement asset displaying the applicable agency markings and or equipment associated with the agency.

State and/or local law enforcement officers means any State or local government law enforcement officer who has authority to enforce State criminal laws.

(b) *Location.* The following area is a security zone: 500-yard radius around escorted vessels in the navigable waters of the Fifth Coast Guard District as defined in 33 CFR 3.25–1, from surface to bottom.

(c) *Regulations.* (1) No vessel may approach within 500 yards of an escorted vessel within the navigable waters of the Fifth Coast Guard District, unless traveling at the minimum speed necessary to navigate safely.

(2) No vessel may enter within a 100-yard radius of an escorted vessel within the navigable waters of the Fifth Coast Guard District, without approval from the District Commander, Captain of the Port or their designated representatives.

(3) Moored or anchored vessels, which are overtaken by a moving zone, must remain stationary at their location until the escorted vessel maneuvers at least 500 yards past.

(4) Vessels restricted in their ability to maneuver may request permission of the District Commander, Captain of the Port or designated representative to enter the security zone in order to ensure safe passage in accordance with the Navigation Rules in 33 CFR chapter I, subparts D and E.

(5) The local COTP may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(6) When moored, a security zone around an escorted vessel may also be enforced by Coast Guard, State or Local law enforcement personnel shoreside.

(7) Persons desiring to transit within 100 yards of an escorted vessel in the Fifth Coast Guard District must contact the local Captain of the Port on VHF channel 16 (156.800 MHz), VHF channel 13 (156.650 MHz) or at telephone numbers:

Philadelphia: (215) 271–4807

Baltimore: (410) 576–2693

Hampton Roads: (757) 668–5555 or (757) 484–8192

Wilmington: (910) 772–2200 or (910) 254–1500

(8) If permission is granted to transit within 100 yards of an escorted vessel, all persons and vessels must comply with the instructions of the District Commander, Captain of the Port or their designated representative.

Dated: February 28, 2005.

S. Brice-O'Hara,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 166

Shipping Safety Fairways

CFR Correction

In Title 33 of the Code of Federal Regulations, Parts 125 to 199, revised as of July 1, 2004, in part 166, on page 791, the following text from §§ 166.103, 166.105, 166.110, and 166.200 is reinstated:

Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

[CGD 86–082, 52 FR 33811, Sept. 8, 1987]

§ 166.105 Definitions.

(a) *Shipping safety fairway* or *fairway* means a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted. Temporary underwater obstacles may be permitted under certain conditions described for specific areas in Subpart B. Aids to navigation approved by the U.S. Coast Guard may be established in a fairway.

(b) *Fairway anchorage* means an anchorage area contiguous to and associated with a fairway, in which fixed structures may be permitted within certain spacing limitations, as described for specific areas in Subpart B.