

Tribe	Student count: student year 01–02	State	Percent
Ramah Navajo	393	NM	.82
Crow Creek Sioux	389	SD	.81
Total for 20 tribes	37,756		78.39
Other tribes	10,410		21.61

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston–02–009]

RIN 2115–AA97

Security Zones; Captain of the Port Houston-Galveston Zone

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a supplemental notice of proposed rulemaking for a notice of proposed rulemaking published June 11, 2002 in which we proposed to establish security zones within the Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport, Texas. These zones are needed to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Entry of persons and vessels into these zones would be prohibited except as authorized by this rule or by the Captain of the Port Houston-Galveston.

DATES: Comments and related material must reach the Coast Guard on or before February 10, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547. Marine Safety Office Houston-Galveston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Houston-Galveston between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Houston-Galveston–02–009], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Houston-Galveston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (67 FR 58317 (Sep. 13, 2002) (continuing the emergency declared with respect to terrorist attacks); 67 FR 59447 (Sep. 20, 2002) (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 is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by

disturbances in international relations of U.S. and such disturbances continue to endanger such relations).

In response to these terrorist acts, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. The Captain of the Port Houston-Galveston established temporary security zones around highly industrialized areas within the Captain of the Port Houston-Galveston Zone. These zones were published on June 11, 2002 [COTP Houston-Galveston–02–011] (67 FR 39851) and November 5, 2002 [COTP Houston-Galveston–02–018] (67 FR 67301).

On June 11, 2002, we published an NPRM entitled “Security Zones; Captain of the Port Houston-Galveston Zone” [COTP Houston-Galveston–02–009] (67 FR 39919). The NPRM proposed to replace the existing temporary security zones with permanent zones. The comment period for the NPRM expired on August 12, 2002. We received only two comments on this rule and both of these comments asked for information on how to comment on the proposed rule. As a result of these comments and to reflect changes in the size of the security zones proposed, the Coast Guard is issuing a supplemental notice of proposed rulemaking.

Discussion of Proposed Rule

Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. The Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport are all heavily industrialized areas with general cargo facilities, container terminals, and bulk liquid transfer facilities.

The proposed rule establishes security zones around areas concentrated with commercial facilities considered critical to national security. These facilities are located in narrow manmade harbors or along narrow depth-restricted ship channels. A terrorist attack within these security zones could have a significant adverse impact on national security and the national economy.

The proposed security zones are as follows:

(1) *Houston, Texas*. The size of this proposed security zone remains unchanged from the NPRM. It includes the Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 and Houston Ship Channel Light 133 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 200 yards of connecting waterways.

(2) *Morgan's Point, Texas*. This proposed security zone is being updated to reflect a more accurate position for Houston Ship Channel Light 91. The Morgan's Point security zone includes the water of Barbour's Cut Ship Channel and Turning Basin west of a line drawn between Junction Light "Barbour's Cut" and Houston Ship Channel Light 91.

(3) *Bayport, Texas*. The proposed security zone for Bayport is being increased to create a zone slightly larger than that published in the NPRM. This will have a minimal impact on vessel traffic because the northern portion of the ship channel remains open. The Bayport security zone includes all waters of the Port of Bayport, Bayport Ship Channel and Bayport Turning Basin south of latitude 29°36'45" N and west of the Bayport Ship Channel Light 9.

(4) *Texas City, Texas*. The size of this proposed security zone is being increased to provide protection for facilities which were previously just outside of the zone. The Texas City security zone includes all waters of the Port of Texas City Channel, Turning Basin and Industrial Canal south and west of a line drawn from Texas City Channel Light 19 through Cut B Inner Range Front Light and terminating on land in position 29°23'16" N, 94°53'15" W.

(5) *Freeport, Texas*. The proposed security zones for Freeport remain the same as in the NPRM. The Dow Barge Canal security zone includes all waters of canal bounded by its junction with the Intracoastal Waterway, by a line drawn between an eastern point at latitude 28°56'48" N, 95°18'20" W, and a western point at 28°56'40" N, 95°18'33" W. The Brazos Harbor security includes all waters of the harbor west of a line drawn between the northern point at 28°56'27" N, 95°20'00" W, and the southern point 28°56'09" N, 95°20'00" W at its junction with the Old Brazos River Cut.

This proposed rule will increase the level of security within the ports by reducing the number of vessels

transiting the industrialized areas and limiting access to only those vessels that are conducting business with port industries. It restricts entry into the zones to all vessels except vessels engaged or assisting in commerce with waterfront facilities, vessels operated by port authorities, vessels operated by waterfront facilities within the security zones, and vessels operated by federal, state, county or municipal agencies. All other vessels having a need to enter these zones but prohibited from doing so under this rule, must obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry. Restricting access to these areas reduces potential methods of attack on vessels, waterfront facilities and adjacent population centers located within these zones.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal. Due to the highly industrialized nature of these zones they are of limited interest to recreational boaters. Vessels engaged in or assisting in, commerce with facilities located within a zone or having the express permission of the Captain of the Port Houston-Galveston, are authorized entry under this rule.

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 proposed rule would not have a significant economic impact on a substantial number of small entities. These security zones will not

have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of commercial vessel traffic conducting business within the zones. Other vessels may seek permission for entry into the zones from the Captain of the Port Houston-Galveston. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671-5100.

Collection of Information

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

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is 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 proposes to amend 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Add § 165.814 to read as follows:

§ 165.814 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) *Location*. The following areas are designated as security zones:

(1) *Houston, TX*. The Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 (LLNR-24445) and Houston Ship Channel Light 133 (LLNR-24450) 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 200 yards of connecting waterways.

(2) *Morgan's Point, TX*. The Barbour's Cut Ship Channel and Turning Basin containing all waters west of a line drawn between Junction Light "Barbour's Cut" 29°41'12" N, 94°59'12" W (LLNR-23525), and Houston Ship Channel Light 91, 29°41'00" N, 94°59'00" W (LLNR-23375) (NAD 1983).

(3) *Bayport, TX*. The Port of Bayport, Bayport Ship Channel and Bayport Turning Basin containing all waters south of latitude 29°36'45" N, and west of the Bayport Ship Channel Light 9 (LLNR-23295) (NAD 1983).

(4) *Texas City, TX*. The Port of Texas City Channel, Turning Basin and

Industrial Canal containing all waters bounded by the area south and west of a line drawn from Texas City Channel Light 19 (LLNR 24180) through Cut B Inner Range Front Light (LLNR 24765), and terminating on land in position 29°23'16" N, 94°53'15" W (NAD 1983).

(5) *Freeport, TX*. (i) The Dow Barge Canal containing all waters bounded by its junction with the Intracoastal Waterway, by a line drawn between the eastern point at latitude 28°56'48" N, 95°18'20" W, and the western point at 28°56'40" N, 95°18'33" W (NAD 1983).

(ii) The Brazos Harbor containing all waters west of a line drawn between the northern point at 28°56'27" N, 95°20'00" W, and the southern point 28°56'09" N, 95°20'00" W (NAD 1983) at its junction with the Old Brazos River Cut.

(b) *Regulations*. (1) Entry into these zones is prohibited except for the following:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational/logistic support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by federal, state, county, or municipal agencies.

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or designated representative.

(3) To request permission as required by these regulations contact "Houston Traffic" via VHF Channels 1^{1/2} or via phone at (713) 671-5103.

(4) All persons and vessels shall 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.

Dated: November 26, 2002.

K. S. Cook,

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

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