

**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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 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. Add § 165.T09–0110 to read as follows:

**§ 165.T09–0110 Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY.**

(a) *Location.* The following area is a temporary safety zone: all waters of the Upper Niagara River, North Tonawanda, NY within two miles of the Grand Island Bridge located at 42°03'36" N, 078°54'45" W to 43°03'09" N, 078°55'21" W to 43°03'00" N, 078°53'42" W to 43°02'42" N, 078°54'09" W. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective Period.* This regulation is effective from 11 a.m. August 29, 2009 to 6 p.m. August 30, 2009. This zone will be enforced from 11 a.m. to 6 p.m. on August 29, 2009 and August 30, 2009.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) Commercial vessels may request permission from the Captain of the Port Buffalo to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Buffalo on Channel 16, VHF–FM.

Dated: March 6, 2009.

**R.S. Burchell,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. E9–9993 Filed 4–29–09; 8:45 am]

**BILLING CODE 4910–15–P**

**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:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish 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 would extend 1,000 yards ahead and astern and 500 yards on each side of certain vessels, which would display the international signal flag or pennant number five to signal a security zone is established around the vessel. 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 (COTP) 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:** Comments and related material must reach the Coast Guard on or before June 1, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–0125 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Cliff Harder, Marine Safety Unit Galveston, telephone (409) 978–2700, extension 2705, or e-mail [cliff.j.harder@uscg.mil](mailto:cliff.j.harder@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0125), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand-deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert “USCG–2008–0124” in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand

delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–0124 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified 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 later notice in the **Federal Register**.

#### 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 proposes to establish moving security zones around certain vessels. This would make permanent a temporary final rule that was effective from January 15, 2009, to April 30, 2009. See 74 FR 13343.

This proposed rule would establish 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 security zones would be 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 proposed 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. All vessels around which a security zone is deemed necessary would display the international signal flag or pennant number five, to signal that there is a security zone established around the vessel. By limiting access to these areas, the Coast Guard is reducing potential methods of attack on these vessels, and potential use of the vessels to launch attacks on waterfront facilities and adjacent population centers located within the Captain of the Port Houston-Galveston zone. Vessels having a need to enter these security zones must obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish 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 would be activated for certain vessels within the Captain of the Port Houston-Galveston zone commencing at U.S. territorial waters through the Freeport Entrance Channel, extending from the surface to the sea floor. These moving security zones would be established as follows: 1000 yards ahead and astern and 500 yards on each side of certain vessels, which would display the international signal flag or pennant number five, while in transit. Unless exempted under this rule, these moving security zones would prohibit entry into or movement within this portion of the Captain of the Port Houston-Galveston zone without Captain of the Port authorization. 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.

All vessels not exempted under this rule would be prohibited from entering these security zones unless authorized by the Captain of the Port Houston-Galveston or his designated representative. 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. In Freeport, vessels can contact the COTP through Marine Safety Unit Galveston, by telephone at (409) 978–2700, or by facsimile at (409) 978–2671.

#### Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the duration of the proposed 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 proposed 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.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reason: The duration of the proposed security zones is limited in nature and would not create undue delay to vessel traffic in and around the Port of Freeport.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Cliff Harder at (409) 978–2700, extension 2705. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### **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 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.

#### **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. 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 proposed rule would not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### **Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing moving security zones around certain vessels in the Caption of the Port Houston-Galveston zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 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. Add 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 within the 12 nautical mile U.S. Territorial Waters in the Captain of the Port Houston-Galveston zone that displays the international signal flag or pennant number five.

(b) *Regulations.* (1) Entry into or remaining in the zones described in paragraph (a) of this section is prohibited for all vessels except:

(i) Moored vessels or vessels anchored in a designated anchorage area. A moored or an anchored vessel in a security zone described in paragraph (a) of this section must remain moored or anchored unless it obtains permission from the Captain of the Port to do otherwise.

(ii) Commercial vessels operating at the waterfront facilities within zone described in paragraph (a) of this section.

(iii) Commercial vessel transiting directly to or from waterfront facilities within a security zone described in paragraph (a) of this section.

(iv) Vessels providing direct operational/logistic support to commercial vessels within a security zone described in paragraph (a) of this section.

(v) Vessels operated by the port authority or by facilities located within a security zone described in paragraph (a) of this section.

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

(2) All persons and vessels within a security zone described in paragraph (a) of this section 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.

(3) 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) *Informational broadcasts.* The Captain of the Port Houston-Galveston will inform the public when moving security zones have been established around vessels via Broadcast Notice to Mariners on VHF channel 16 and 13.

(d) *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: February 18, 2009.

**William J. Diehl,**

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

[FR Doc. E9-9990 Filed 4-29-09; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0124]

RIN 1625-AA87

#### Security Zone; Freeport LNG Basin, Freeport, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone in the Freeport LNG Basin. 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. Entry into this zone would be prohibited, except for vessels that have obtained the express permission from the Captain of the Port Houston-Galveston or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before June 1, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2008-0124 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

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#### FOR FURTHER INFORMATION CONTACT:

Lieutenant Cliff Harder, Marine Safety Unit Galveston, telephone (409) 978-2700, extension 2705, or e-mail [cliff.j.harder@uscg.mil](mailto:cliff.j.harder@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

## Public Participation and Request for Comments

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### Submitting Comments

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