DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1078]

RIN 1625–AA87

Moving Security Zone Around Escorted Vessels on the Lower Mississippi River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Captain of the Port of New Orleans (COTP New Orleans) is establishing a Moving Security Zone on the Mississippi river, mile marker 88.0 through mile marker 106.0, extending 300 yards on all sides of vessels being escorted by one or more Coast Guard assets or other federal, state, or local law enforcement agency assets. A vessel may request permission of the COTP New Orleans or the on-scene Coast Guard or enforcement agency asset to enter the security zone, and if permitted, must proceed at the minimum safe speed and must comply with the orders of the COTP New Orleans or the on-scene asset. The COTP New Orleans will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by Marine Safety Information Bulletins or Broadcast Notice to Mariners. This moving security zone is necessary to protect vessels deemed to be in need of escort protection by the COTP New Orleans for security reasons.

DATES: This rule is effective from January 1, 2013, through March 31, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–1078]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Kenneth Blair, Sector New Orleans, U.S. Coast Guard; telephone (504) 365–2392, email *Kenneth.E.Blair@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:

Table of Acronyms

DHS—Department of Homeland Security
FR—Federal Register
NPRM—Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Based on a risk evaluation conducted on December 4, 2012, the Coast Guard has decided that a moving security zone regulation is required from on or about January 1 until March 31, 2013. This security zone is required to protect escorted vessels and personnel from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature. The NPRM process would unnecessarily delay the effective dates and would be contrary to public interest by delaying or foregoing the necessary protections required for the escorted vessels and personnel.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This temporary final rule is needed to protect escorted vessels and personnel from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. The 30-day notice period would be impracticable and unnecessarily delay the effective dates and protections required for these escorted vessels and personnel.

B. Basis and Purpose

The purpose of this rule is to provide enhanced protection of escorted vessels on a portion of the Lower Mississippi River between January and April 2013. Certain vessels, including high capacity passenger vessels, vessels carrying certain dangerous cargoes as defined in 33 CFR part 60, tank vessels constructed to carry oil or hazardous materials in bulk, and vessels carrying liquefied hazardous gas as defined in 33 CFR part 127 have been deemed by the COTP New Orleans to require escort protection during transit between mile marker 88.0 and mile marker 106.0 of the Lower Mississippi River, between January and April, 2013. Establishment of a moving security zone allows the Coast Guard to provide enhanced security of escorted vessels during transit, thereby protecting the escorted vessels and the public from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature. When considering this rule the Coast Guard considered the alternative option of vessel traffic restrictions during the transit of vessels deemed in need of escorts. We determined that establishment of a moving security zone provides for enhanced protection of escorted vessels while causing little if any disruption to other routine navigation since most vessels will be allowed to transit within the outer 250 yards of the security zone once a deviation to the rule is requested and granted.

The legal basis and authorities for this rule are found in 33 U.S.C. 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; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

C. Discussion of the Final Rule

The Coast Guard is establishing moving security zones for escorted vessels to protect the escorted vessels and personnel. While this rule is effective, when an escorted vessel is transiting between miles 88 and 106 on the Lower Mississippi River, there will be a 300-yard security zone around the escorted vessel. The COTP New Orleans may permit persons and vessels to transit through the security zone at a minimum safe speed, so long as no vessel or person enters within the 50-yard portion of the security zone closest to the vessel. Permission to enter the security zone may be requested from the COTP New Orleans through the on-scene Coast Guard or enforcement agency asset, via VHF–FM Ch.12, VHF–FM Ch. 67, or the Coast Guard Vessel Traffic Center at (504) 365–2330. The COTP New Orleans will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by Marine Safety Information Bulletins or Broadcast Notice to Mariners. Coast Guard assets

or other Federal, State or local law enforcement agency assets will be clearly identified by lights, vessel markings, or with agency insignia.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The impact of this security zone will be minimal as the zone will only be enforced for short periods of time while escorted vessels transit through an 18-mile stretch of the Lower Mississippi River. Other vessel traffic on the river will be able to transit through the outer 250 yards of the security zone with the permission of the COTP. Additionally, the security zone location is within the New Orleans Harbor Vessel Service Area that requires vessels transiting to check in when entering the area or when departing berth. This pre-existing check in requirement will assist in granting early permission for deviation from the rule allowing vessels to pass through the zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit in the vicinity of mile marker 88.0 through mile marker 106.0 of the Lower Mississippi River, extending 300 yards in all directions of an escorted vessel. This security zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This security zone would be activated, and thus subject to enforcement, for only those times when a vessel is under escort. The security zone location is within the New Orleans Harbor Vessel Service Area that requires vessels transiting to check in when entering the area or when departing berth. This pre-existing check in requirement will assist in granting early permission for deviation from the rule allowing vessels to pass through the zone. Although the safety zone would apply 300 yards around the escorted vessel and encompass almost the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Before the activation of the zone, we would issue maritime advisories widely available to users of the river.

3. 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 rule. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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). 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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. 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 (adjusted for inflation) 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a moving security zone around escorted vessels. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

E. 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. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.06–1, 6.05–6 and 160.5; Pub. L. 107–295, 116 stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T08–1078 to read as follows:

§ 165.T08–1078 Moving Security Zone around escorted vessels on the Lower Mississippi River.

(a) *Location.* The following areas are security zones: Navigable waters of the Lower Mississippi River, from mile marker 88.0 to mile marker 106.0, extending 300 yards in all directions of escorted vessels. Escorted vessels will be escorted by one or more Coast Guard assets or other federal, state, or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia.

(b) *Effective Period.* This rule is effective January 1, 2013 through March 31, 2013.

(c) *Regulations.* (1) Under the general regulations in § 165.33 of this part, vessels are prohibited from entering or transiting the security zones described in paragraph (a) of this temporary section, § 165.T08–1078.

(2) If granted permission to enter a security zone, a vessel must operate at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard. When within the security zone, no vessel or person is allowed within 50 yards of the escorted vessel unless authorized by the Coast Guard.

(3) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans through the on-scene Coast Guard or other enforcement agency asset, via VHF–FM Ch. 12, VHF–FM Ch. 67, or the Coast Guard Vessel Traffic Center at (504) 365–2330.

(4) All persons and vessels granted permission to enter a security zone must comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard, and local, state, and federal law enforcement officers on clearly identified law enforcement agency vessels.

(d) *Informational broadcasts.* The Captain of the Port or a designated representative will inform the public through marine safety information bulletins or broadcast notices to mariners of the enforcement of the security zone.

Dated: December 19, 2012.

P.W. Gautier,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1068]

RIN 1625–AA00

Safety Zones; TEMCO Grain Facilities; Columbia and Willamette Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones around the TEMCO grain facilities on the Columbia River in Kalama, WA and the Willamette River in Portland, OR. These safety zones extend to the waters of the Columbia and Willamette Rivers, respectively, approximately between the navigable channel and the facility described. These safety zones are being established to ensure that protest activities relating to a labor dispute involving these facilities do not create hazardous navigation conditions for vessels in the navigable channel or vessels attempting to moor at the facilities.

DATES: This rule is effective January 3, 2013 and has been enforced with actual notice since December 7, 2012 and it will be enforced until February 4, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–1068]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone (503) 240–9319, email *MSUPDXWWM@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:

Table of Acronyms

DHS Department of Homeland Security