

Signed at Washington, DC, this 12th day of April, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-05-009]

RIN 1625-AA00

Safety Zone; Chicago Sanitary and Ship Canal, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone around the tank barge EMC423 during salvage operations. This safety zone is necessary to ensure the safety of workers and divers during salvage operations of the tank barge EMC423. The temporary safety zone prohibits persons or vessels from entering the zone unless authorized by the Captain of the Port Chicago or the designated on-scene representative.

DATES: This rule is effective from 5 p.m. on April 5, 2005, until 5 p.m. on May 31, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket (CGD09-05-009), and are available for inspection or copying at Commanding Officer, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street Suite D, Burr Ridge, IL 60527, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Cameron Land, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986-2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. 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**. Delaying this rule would be

impracticable and contrary to public interest as boating season is resuming and immediate action is necessary to clear the barge from the canal and perform clean up of the surrounding area; further, immediate action is necessary to ensure the safety of persons and vessels during the salvage operations and to prevent possible loss of life or property. During the enforcement of this safety zone, comments will be accepted and reviewed and may result in a modification to the rule.

Background and Purpose

On January 19, 2005, the tank barge EMC423 was involved in a marine casualty on the Chicago Sanitary and Ship Canal (CSSC) at Mile Marker 317.5. The barge sustained an explosion and partially sank with a full load of clarified slurry oil on board. Salvage and recovery operations are underway. With the change in weather and increase in recreational vessel traffic in the area, the Captain of the Port Chicago finds it necessary to implement operational restrictions and control vessel traffic through the area to protect response workers, vessels transiting the zone, and to maintain the integrity of the site.

Discussion of Rule

This rule establishes a safety zone from bank-to-bank beginning at the Cicero Avenue Bridge at Mile Marker 317.3 and ending at the Belt Railroad Bridge at Mile Marker 317.5 on the Chicago Sanitary and Ship Canal.

Vessels will not be allowed to enter the safety zone, without the express permission of the Captain of the Port Chicago or the designated on-scene representative. It is anticipated that controlled passage of vessels will be possible on a case-by-case basis.

Barges transiting the area will be limited to dry cargo, 35 foot wide with drafts not exceeding 9-feet. Up bound tows are limited to one barge. Down bound tows are limited to one loaded barge or two empty barges. All down bound tows require a bow assist boat.

All commercial and recreational vessels must contact the Coast Guard Forward Command Post via VHF-FM Channel 19 or land line at 630-336-0291 to request permission to transit through the safety zone.

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 vessels that would fall within the applicability of the regulation, the relatively small size of the limited access area around the EMC423 tank barge, the minimal amount of time that vessels will be restricted when the zone is being enforced. In addition, vessels that will need to enter the zone may request permission on a case-by-case basis from the Captain of the Port or the designated on-scene 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.

This rule affects the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the safety zone in and around the sunken barge.

This rule would not have a significant impact on a substantial number of small entities because the restrictions affect only a limited area for a brief amount of time as this safety zone is effective only when salvage operations on the tank barge EMC423 is underway. Further, transit through the zone may be permitted with proper authorization from the Captain of the Port Chicago or his designated representative. Additionally, the opportunity to engage in recreational activities outside the limits of the safety zone will not be disrupted.

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 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 governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Cameron Land, Coast Guard Marine Safety Office Chicago, at (630) 986–2155.

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 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 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 M16475.1D, 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. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be 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 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. From 5 p.m. on April 5, 2005 until 5 p.m. on May 31, 2005 add § 165.T09.009 to read as follows:

§ 165.T09.009 Safety Zone; Chicago Sanitary and Ship Canal, Chicago, IL.

(a) *Location.* The following area is a safety zone: From bank-to-bank beginning at the Cicero Avenue Bridge at Mile Marker 317.3 and ending at the Belt Railroad Bridge at Mile Marker 317.5 on the Chicago Sanitary and Ship Canal.

(b) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, vessels will not be allowed to enter the safety zone without the express permission of the Captain of the Port Chicago or the designated on-scene representative. It is anticipated that controlled passage of vessels will be possible on a case-by-case basis.

(2) Barges transiting the area will be limited to dry cargo, 35 foot wide with drafts not exceeding 9-feet. Up bound tows are limited to one barge. Down bound tows are limited to one loaded barge or two empty barges. All down bound tows require a bow assist boat.

(3) All commercial and recreational vessels must contact the Coast Guard Forward Command Post via VHF-FM Channel 19 or land line at 630-336-0291 to request permission to transit through the safety zone.

(c) *Effective Date.* This regulation is effective from 5 pm on April 05, 2005, through 5 pm on May 31, 2005, unless cancelled sooner by the Captain of the Port Chicago by Broadcast Notice to Mariners.

Dated: April 5, 2005.

T.W. Carter,

Captain, U.S. Coast Guard, Captain of the Port, Chicago.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Mobile-04-057]

RIN 1625-AA87

Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones around all cruise ships while transiting or moored in the Port of Mobile and Mobile Ship Channel shoreward of the Mobile Sea Buoy. These security zones are needed to ensure the safety and security of these vessels. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port Mobile or a designated representative.

DATES: This rule is effective at 6 p.m. on May 23, 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 (COTP Mobile 04-057) and are available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615-1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (LT) Maurice York, Operations Department, Marine Safety Office Mobile, at (251) 441-5940.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 7, 2005, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL" in the *Federal Register* (70 FR 1400). We received no comments on the proposed rule. No public hearing was requested, and none was held.

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 (69 FR 55313 (Sep. 13, 2004) (continuing the emergency declared with respect to terrorist attacks); 69 FR 56923 (Sep. 22, 2004) (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 and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary.

On November 12, 2004, the Coast Guard published a temporary final rule entitled "Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL" (69 FR 65373). This temporary final rule established temporary security zones around cruise ships when transiting the Mobile Ship Channel and Port of Mobile, as well as when moored in the Port of Mobile. This temporary final rule will expire at 6 p.m. on April 14, 2005. However, due to the increased security concerns surrounding the transit of cruise ships, the Captain of the Port Mobile is establishing permanent security zones around all cruise ships

while such vessels are transiting the Mobile Ship Channel or Port of Mobile, and while moored in the Port of Mobile.

Discussion of Comments and Changes

We received no comments on the proposed rule, and no changes have been made from the proposed rule.

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.

These security zones will only be enforced while cruise ships are located shoreward of the Mobile Sea Buoy, are transiting the Mobile Ship Channel, and are moored in the Port of Mobile. Once a cruise ship is moored in the Port of Mobile, the security zone will be reduced to 25 yards. While the cruise ship is moored, other vessels will be able to safely transit around this zone provided they approach no closer than 25 yards. Additionally, while a cruise ship is in transit on the Mobile Ship Channel or in the Port of Mobile, the Captain of the Port or a designated representative may allow other persons or vessels to enter into the security zone for the purpose of passing or overtaking a cruise ship if such persons or vessels obtain permission from the on-scene Coast Guard representative prior to initiating such action.

Notifications of the enforcement periods of this security zone will be made to the marine community through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

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.