



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2016-0746

RIN 1625-AA00

Safety Zone; M/V Zhenhuan 14 Wando Terminal Crane Movement; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 100 yard temporary moving safety zone around the M/V Zhenhuan 14 during its inbound and outbound transit as well as all movements in between the Charleston Harbor entrance buoy and the Wando Welch Terminal on the Charleston Harbor, and Wando River, Charleston, SC. The M/V Zhenhuan 14 will be transporting 5 gantry cranes between the dates of August 5, 2016 through August17, 2016. The safety zone is necessary to protect the public from hazards associated with transporting the large cranes. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from August 5, 2016 through August17, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> type USCG-2016- 0746 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, e-mail John.Z.Downing@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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 because the Coast Guard was notified of this situation only 10 days prior to the vessel arrival. It is impracticable to publish a NPRM because we must establish this safety zone by August 5, 2016 to protect vessels and people in the vicinity of the M/V Zhenhuan 14’s transit.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the safety hazards associated with the transit of the M/V Zhenhuan

14.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the Transit of the M/V Zhenhuan 14 will be a safety concern for anyone within a 100-yard radius around the outer most points of the vessel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the vessel is transiting.

The legal basis for this rule is the Coast Guard's Authority to establish a safety zone: 33 USC 1231. The purpose of the proposed rule is to ensure safety of life on the navigable water of the United States during the transit of the M/V Zhenhuan 14.

IV. Discussion of the Rule

This rule establishes a safety zone on August 5, 2016 through August 17, 2016 during all movements of the M/V Zhenhuan 14 with its cranes in the downward position. The vessel is 815 ft long with a beam of 450 ft with the cranes in the downward position. The safety zone will cover all navigable waters within a 100-yard radius around the outer most points of the vessel. The duration of the zone is intended to protect personnel, vessels, and the marine environment while the vessel is transiting the Charleston Harbor, and Wando River, Charleston, SC. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. 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 and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The economic impact of this rule is not significant for the following reasons: (1) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they will be able to operate in the surrounding area during the enforcement periods; (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (3) the Coast Guard will provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 section.

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.

C. 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).

D. Federalism and Indian Tribal Governments

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 have determined that it is

consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination 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 a temporary safety zone, that will prohibit entry within a 100-yard radius around the

outer most points of the vessel.

G. 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.

List of Subjects in 33 CFR Part 165

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, 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; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-0746 to read as follows:

§ 100.T07-0746 Safety Zone; M/V Zhenhuan 14 Wando Terminal Crane Movement; Charleston, SC.

(a) Regulated area. The following regulated area is a moving safety zone: all waters of the Charleston Harbor and Wando Rivers within a 100 yard radius around the outer most points of the M/V Zhenhuan 14 while the cranes are in the downward position. The safety zone will start in Charleston Harbor, in approximate position 32°46'10"N, 79°55'15"W and transit to the Wando Welch Terminal, in position 32°50'02" N, 79°53'29" W. During the outbound transit the M/V

Zhenhuan 14 will proceed from the Wando Welch Terminal in approximate position 32°50'02" N, 79°53'29" W to the Charleston Harbor entrance in approximate position 32°46'10"N, 79°55'15"W. All coordinates are North American Datum 1983.

(b) Definition. As used in this section, "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843)740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety

Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement period. This rule will be enforced when the M/V Zhenhuan 14 is transiting Charleston Harbor between August 5, 2016 through 17, 2016.

Dated: August 1, 2016

G. L. Tomasulo,
Captain, U.S. Coast Guard,
Captain of the Port Charleston

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