



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0156]

RIN 1625-AA87

Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard establishes two security zones. One of the zones is a temporary fixed security zone for the receiving facility's mooring basin while the Liquefied Natural Gas Carrier (LNGC) MARVEL FALCON is moored at the facility. The other zone is a moving security zone encompassing all navigable waters within a 500-yard radius around the LNGC MARVEL FALCON while the vessel transits with cargo in the La Quinta Channel and Corpus Christi Ship Channel in Corpus Christi, TX. The security zones are needed to protect personnel, vessels, and the marine environment from potential hazards created by Liquefied Natural Gas (LNG) cargo aboard the vessel. Entry of vessels and persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi.

DATES: This rule is effective without actual notice from 12 a.m. through 11:59 p.m. on March 18, 2019. For the purposes of enforcement, actual notice will be used from March 11, 2019 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0156 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 Petty Officer Kevin Kyles, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361-939-5125, e-mail Kevin.L.Kyles@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Corpus Christi
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
LNGC	Liquefied Natural Gas Carrier
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)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because it is impracticable. We must establish these security zones by March 11, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of the vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with LNGC MARVEL FALCON between March 11, 2019 and March 18, 2019 will be a security concern while the vessel is moored at the receiving facility and within a 500-yard radius of the vessel while the vessel transits with cargo.

IV. Discussion of the Rule

This rule establishes two security zones around LNGC MARVEL FALCON from March 11, 2019 through March 18, 2019. A fixed security zone will be in effect in the mooring basin bound by 27°52'53.38" N, 097°16'20.66"W on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60"W; thence to 27°52'38.55"N, 097°15'45.56"W; thence to 27°52'49.30"N, 097°15'45.44"W; thence west along the shoreline to 27°52'53.38" N, 097°16'20.66"W, while LNGC MARVEL FALCON is moored. A moving security zone will cover all navigable waters within a 500-yard radius of the LNGC MARVEL FALCON while the vessel transits outbound with cargo through the La Quinta Channel and Corpus Christi Ship Channel. No vessel or person will be permitted to enter the security zones without obtaining permission from the COTP or a designated representative.

Entry into these security zones is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or

petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi. Persons and vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 361-939-0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement times and dates for these security zones.

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and location of the security zone. This rule will impact a small designated area of the Corpus Christi Ship Channel and La Quinta Channel, where the vessel traffic is usually low, for only 8 days, while the vessel is moored at the receiving facility and during the vessel’s transit

while loaded with cargo. Moreover, the Coast Guard will issue BNMs via VHF-FM marine channel 16 about the zones and the rule allows vessels to seek permission to enter the zones.

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 these temporary security zones 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 above.

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 an 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 Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 a temporary fixed security zone while LNGC MARVEL FALCON is moored at the receiving facility mooring basin bound by 27°52'53.38" N, 097°16'20.66"W on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60"W; thence to 27°52'38.55"N, 097°15'45.56"W; thence to 27°52'49.30"N, 097°15'45.44"W; thence west along the shoreline to 27°52'53.38" N, 097°16'20.66"W, and a temporary moving security zone while the vessel transits with cargo within the La Quinta Channel and Corpus Christi Ship Channel, that will prohibit entry within 500-yard radius of LNGC MARVEL FALCON. These zones are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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

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 is revised to read as follows:

Authority: 46 U.S.C. 70034; 46 U.S.C. 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0156 to read as follows:

§165.T08-0156 Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX.

- (a) Location. The following areas are security zones:

- (1) The mooring basin bound by 27°52'53.38" N, 097°16'20.66"W on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60"W; thence to 27°52'38.55"N, 097°15'45.56"W; thence to 27°52'49.30"N, 097°15'45.44"W; thence west along the shoreline to 27°52'53.38" N, 097°16'20.66"W, while Liquefied Natural Gas Carrier (LNGC) MARVEL FALCON is moored.

- (2) All navigable waters encompassing a 500-yard radius around the LNGC

MARVEL FALCON while transiting outbound with cargo through the La Quinta Channel and Corpus Christi Ship Channel.

(b) Effective period. This section is effective without actual notice from 12 a.m. through 11:59 p.m. on March 18, 2019. For the purposes of enforcement, actual notice will be used from March 11, 2019 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) Period of enforcement. This section will be enforced from the time LNGC MARVEL FALCON moors and while the vessel is transiting outbound through the La Quinta Channel and Corpus Christi Ship Channel from March 11, 2019 through March 18, 2019.

(d) Regulations. (1) The general regulations in §165.33 apply. Entry into these temporary security zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons and vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 361-939-0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(e) Information broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement times and date for these security zones.

Dated: March 12, 2019.

E. J. Gaynor,
Captain, U.S. Coast Guard,
Captain of the Port Sector Corpus Christi.
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