

section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) *Effective period.* This section will be enforced from 2 p.m. to 7 p.m. local time on September 9, 2005.

Dated: August 11, 2005.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD11-05-006]

RIN 1625-AA11

Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel as a Regulated Navigation Area (RNA) for certain commercial vessels transporting oil or hazardous material as cargo. This action is necessary to reduce significant hazards to subject vessels, the port and the public that are present during periods of poor weather conditions. The RNA codifies existing Captain of the Port San Francisco Bay (COTP) policies for vessels transporting oil or certain dangerous cargoes in bulk within Humboldt Bay.

DATES: This rule is effective starting at 12:01 a.m. on September 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 CGD11-05-006 and are available for inspection or copying at the Waterways Branch of the Marine Safety

Office San Francisco Bay, Coast Guard Island, Alameda, California 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Ian Callander, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, and (510) 437-3401.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 13, 2005, we published a Notice of Proposed Rule Making (NPRM) entitled, Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, CA, in the **Federal Register** (70 FR 25511). We received one comment on the proposed rule. No public meeting was requested, and none was held.

Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein is punishable by civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, and imprisonment up to 10 years.

The Sector Commander will enforce this regulation and has the authority, as delegated by the Captain of the Port, San Francisco Bay, to take steps necessary to ensure the safe transit of vessels in Humboldt Bay. The Sector Commander can enlist the aid and cooperation of any Federal, State, county, and municipal agency to assist in the enforcement of the regulation.

Background and Purpose

Because Humboldt Bay has a breaking bar, a narrow entrance channel, and no general anchorages within the bay, transits of this area present significant hazards to vessels carrying oil or hazardous material as cargo. The potential hazards to the subject vessels and the consequences of casualties involving commercial vessels carrying

oil or hazardous material as cargo warrant special procedures to reduce the potential for a collision or grounding and any subsequent release of a cargo covered by this regulation.

In this particular rulemaking, the Coast Guard designates an area around the Humboldt Bay Bar as an RNA for the following purposes: (1) To establish the Coast Guard's authority to prohibit vessels carrying oil or hazardous material as cargo from crossing the bar during unsafe conditions, (2) to establish waiver, notice, and vessel escort policies, and (3) to delegate the authority for enforcing these regulations to the Sector/Air Station Humboldt Bay Commander.

Discussion of Comments and Changes

We received one comment on the proposed rule. No public hearing was requested, and none was held. The comment we received noted that Group Humboldt Bay would be stood-down and incorporated into Sector/Air Station Humboldt Bay prior to the publishing of this final rule. 'Group Humboldt Bay' and 'Group Commander' have been replaced with 'Sector/Air Station Humboldt Bay' and 'Sector Commander' respectively in this final rule. Because this change does not have a substantive impact on the regulation, we feel that making this change does not warrant an extension to the public comment period provided by the NPRM.

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. The effect of this regulation would not be significant for the following reasons: (1) Very few vessels carrying oil or certain dangerous cargoes transit the Humboldt Bay area, and (2) those vessels carrying oil or hazardous material as cargo have been complying with the COTP advisories that established the same procedures that are established in this regulation. Therefore, this rule would be a continuation of the already established policy of monitoring the entrance and departure of the above-mentioned

vessels. In addition, vessels will continue to be allowed to enter on a case-by-case basis with prior permission of the Sector Commander or his designated representative.

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 is not expected to have a significant economic impact on a substantial number of small entities. The effect of this rule on small entities would not be significant for the following reasons: (1) Very few vessels carrying oil or hazardous material as cargo transit the Humboldt Bay area, and (2) those vessels carrying oil or hazardous material as cargo have been complying with the COTP advisories that established the same procedures that are being established by this regulation. In addition, the regulation would still allow the regulated vessels to complete transits of the bar under favorable weather conditions, and the Sector Commander would continue to grant entrance waivers on a case-by-case basis.

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.

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 1–800–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 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 rule would 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 effect 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 would not create an environmental risk to health or risk to safety that might 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 because it would establish an RNA.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” (CED) are 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, Waterways.

n 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

n 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.

n 2. Add § 165.1195, to read as follows:

§ 165.1195 Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, California.

(a) *Location.* The Regulated Navigation Area (RNA) includes all navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, Humboldt Bay, California.

(b) *Definitions.* As used in this section—

COTP means the Captain of the Port as defined in Title 33, Code of Federal Regulations, Section 1.01–30 and 3.55–20.

Sector means Coast Guard Sector/Air Station Humboldt Bay.

Sector Commander means the Commanding Officer of Coast Guard Sector/Air Station Humboldt Bay.

Hazardous Material means any of the materials or substances listed in 46 CFR 153.40.

Humboldt Bay Area means the area described in the location section of this regulation.

Oil means oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Station means Coast Guard Station Humboldt Bay.

Tank Vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

(c) *Applicability.* These regulations apply to the owners and operators of tank vessels transporting oil or hazardous material as cargo within the Humboldt Bay Area.

(d) *Regulations.* (1) In addition to the arrival and departure notification requirements listed in title 33 CFR, part 160, Ports and Waterways Safety—General, subpart C—Notifications of “Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes”, the owner, master, agent or person in charge of a vessel to which this notice applies shall obtain

permission to cross within four hours of crossing the Humboldt Bay Bar. Between 6:30 a.m. and 10 p.m., notification/requests for permission can be made to Station Humboldt Bay on VHF–FM Channel 16, or at (707) 443–2213. If between 10 p.m. and 6:30 a.m., or if unable to reach the Station, notification/requests for permission can be made directly to Sector/Air Station Humboldt Bay on VHF–FM Channel 16 or at (707) 839–6113.

(2) Permission for a bar crossing by vessels or towing vessels and their tows to which this regulation applies is dependent on environmental and safety factors, including but not limited to: Sea state, winds, visibility, size and type of vessel or tow, wave period, time of day/night, and tidal currents. The final decision to close the bar rests with Humboldt Bay Sector Commander or his designated representative. At a minimum, Humboldt Bay Bar Channel crossings by vessels subject to this advisory will generally not be permitted unless all of the following conditions exist: Proper permission to cross has been received, sea conditions at the bar are less than 6 feet, winds at the bar are less than 30 knots, the transit will take place during daylight hours, the vessel has only a single tow or no tow, the visibility at the bar is greater than 1,000 yards, and the vessel and tow are in proper operating condition.

(3) If the bar is closed to vessels to which this regulation applies, waiver requests will be accepted within four hours of crossing the entrance channel. If the waiver request is made between 6:30 a.m. and 10 p.m., the request should be made to Station Humboldt Bay on VHF–FM Channel 16, or at (707) 443–2213. If between 10 p.m. and 6:30 a.m., or if unable to reach the Station, the request can be made directly to Sector/Air Station Humboldt Bay on VHF–FM Channel 16 or at (707) 839–6113. Waiver requests must be made by the vessel master and must provide the following: A description of the proposed operation, the conditions for which the waiver is requested, the reasons for requesting the waiver, the reasons that the requester believes the proposed operation can be accomplished safely, and a callback phone number. The Station or Sector Watchstander receiving the request will brief the Officer in Charge of the Station who will then brief the Sector Commander. The authority to grant waivers rests with the Sector Commander or his designated representative.

(4) In addition to the requirements in paragraphs (d)(1)–(3) of this section, vessels transporting liquefied hazardous gases or compressed hazardous gases in

bulk as cargo into or out of Humboldt Bay are required to be aided by two assist tugs. If the vessel carrying the gases is towed, the assist tug requirement is in addition to the towing tug. The assist tugs shall escort the vessel through its transit and must be stationed so as to provide immediate assistance in response to the loss of power or steering of the cargo vessel, its towing tug, or loss of control over the tow.

(5) Vessels to which this regulation applies may be required by the Sector Commander or his designated representative to be escorted by a Coast Guard vessel during their transit. In addition, if a vessel master, agent, or pilot has concerns about the safety of a vessel's transit through the Humboldt Bay Entrance Channel, a Coast Guard escort may be requested. Requests for an escort should be directed to Station on VHF–FM channel 16 or at (707) 443–2213 between 6:30 a.m. and 10 p.m., or to Sector on VHF–FM channel 16 or at (707) 839–6113 if between 10 p.m. and 6:30 a.m.

(e) *Enforcement.* Acting as a representative of the Captain of the Port, the Humboldt Bay Sector Commander will enforce this regulation and has the authority to take steps necessary to ensure the safe transit of vessels in Humboldt Bay. The Sector Commander can enlist the aid and cooperation of any Federal, State, county, and municipal agency to assist in the enforcement of the regulation. All persons and vessels shall comply with the instructions of the Sector Commander or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 8, 2005.

K.J. Eldridge,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

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