

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG-2008-0284, Formerly COTP San Juan 05-007]

RIN 1625-AA87

**Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is issuing a final rule for a security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands, which makes a slight change to the current boundary established by an interim rule. The security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts. This rule excludes entry into the security zone by all vessels without permission of the U.S. Coast Guard Captain San Juan (COTP) or a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

**DATES:** This rule is effective June 13, 2008.

**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 Docket No. USCG-2008-0284 (formerly COTP San Juan 05-007), and are available online at <http://www.regulations.gov>. This material is also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday thru Friday, except Federal holidays and at Sector San Juan Prevention Operations Department in San Juan, Puerto Rico, between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule call Lieutenant A. M. Schmidt of Sector San Juan, Prevention Operations Department at (787) 289-2086. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On February 10, 2005, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands" in the **Federal Register** (70 FR 7065). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

On August 6, 2007, we published an interim rule (IR) with request for comments entitled "Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands" in the **Federal Register** (72 FR 43535). We received no letters commenting on the interim rule. No public meeting was requested, and none was held.

**Background and Purpose**

Before the IR we published in August, the Coast Guard published similar temporary security zones in the **Federal Register** at 67 FR 2332, January 17, 2002; 67 FR 57952, September 13, 2002; 68 FR 22296, April 28, 2003; 68 FR 41081, July 10, 2003; 69 FR 6150, February 10, 2004; 69 FR 29232, May 21, 2004; and 70 FR 2950, January 19, 2005. Given the highly volatile nature of the substances handled at the HOVENSA facility, the Coast Guard recognizes that it could be a potential terrorist target and there is continuing risk that subversive activity could be launched by vessels or persons in close proximity to the facility. This activity could be directed against tank vessels and the waterfront facility. The COTP is reducing this risk by prohibiting all vessels from entering within approximately two miles of the HOVENSA facility unless they have been specifically authorized by the COTP or have submitted a notice of arrival in accordance with the notice of arrival requirements of 33 CFR part 160, subpart C.

**Discussion of Comments and Changes**

Although no comments were received on the NPRM, in the preamble of the IR the COTP proposed an amendment to the regulatory text before issuing this final rule. The purpose of the amendment was to clarify the boundaries of the security zone and reduce the potential for misinterpretation. The proposed amendment was published in the aforementioned IR with request for comments in the **Federal Register**. No comments were received, and we have made no changes from the text of the interim rule other than what was specifically proposed in the IR: To change a portion of the description of

the security zone in 33 CFR 165.766(a) from "and returning to the point of origin," to "then tracing the shoreline along the water's edge to the point of origin." 72 FR 43535, August 6, 2008.

**Discussion of Rule**

The security zone includes all waters surrounded by a line connecting the following coordinates: 17°41'31" N, 064°45'09" W; 17°39'36" N, 064°44'12" W; 17°40'00" N, 064°43'36" W; 17°41'48" N, 064°44'25" W, and then tracing the shoreline along the water's edge to the point of origin. The security zone includes the waters extending approximately 2 miles seaward of the HOVENSA facility including Limetree Bay Channel and portions of Limetree Bay. All coordinates are based upon North American Datum 1983 (NAD 1983). All vessels without a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C, are prohibited from entering the zone unless specifically authorized by the COTP.

**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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The burden imposed on the public by this rule is minimal and mariners may obtain permission to enter the zone from the COTP or by scheduling an arrival in accordance with the Notice of Arrival requirements of 33 CFR, part 160, subpart C.

**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.

Owners of small fishing or charter diving operations that operate near the

HOVENSA facility may be affected by the existence of this security zone.

This rule will not have a significant economic impact on the above-mentioned entities or a substantial number of small entities because this security zone covers an area that is not typically used by commercial fishermen or divers. Additionally, vessels can transit around the zone and may be allowed to enter the zone on a case-by-case basis with the permission of the COTP.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM 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 1–888–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.

#### 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 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 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. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” 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, 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, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.770 to read as follows:

#### § 165.770 Security Zone: HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* The Coast Guard is establishing a security zone in and around the HOVENSA Refinery on the south coast of St. Croix, U.S. Virgin Islands. This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1

in position 17°41'31" N, 064°45'09" W; Point 2 in position 17°39'36" N, 064°44'12" W; Point 3 in position 17°40'00" N, 064°43'36" W; Point 4 in position 17°41'48" N, 064°44'25" W; then tracing the shoreline along the water's edge to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Regulations.* (1) Under § 165.33, entry into or remaining within the regulated area in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port San Juan or vessels have a scheduled arrival at HOVENSA, Limetree Bay, St. Croix, in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

(2) Persons and vessels desiring to transit the Regulated Area may contact the U.S. Coast Guard Captain of the Port San Juan at telephone number 787-289-2041 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port.

Dated: April 30, 2008.

**R.R. Rodriguez,**

*Commander, U.S. Coast Guard, Acting Captain of the Port San Juan.*

[FR Doc. E8-10697 Filed 5-13-08; 8:45 am]

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 8

[Docket ID ED-2007-OS-0138]

#### **Demands for Testimony or Records in Legal Proceedings**

**AGENCY:** Office of the Secretary, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations regarding the production of information pursuant to demands in judicial or administrative proceedings. The changes are intended to promote consistency in the Department's assertion of privileges and objections, and thereby prevent harm that may result from inappropriate disclosure of confidential information or inappropriate allocation of agency resources. These changes apply only where employees are subpoenaed in litigation to which the agency is not a party. Former Department employees are expressly required to seek the Secretary's approval prior to responding to subpoenas that seek non-public materials and information acquired

during their employment at the Department.

**DATES:** These regulations are effective June 13, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Christine M. Rose, U.S. Department of Education, 400 Maryland Avenue, SW., room 6C122, Washington, DC 20202-2110. Telephone: (202) 401-6700.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** On December 26, 2007 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (72 FR 72976). In the preamble to the NPRM, the Secretary discussed on pages 72976 and 72977 the major changes proposed in that document to clarify the instructions and procedures to be followed by current and former Department employees with respect to the production and disclosure of material or information acquired as a result of performance of the person's official duties or because of the person's official status in response to judicially enforceable subpoenas or demands in judicial or administrative proceedings, except demands from the Congress. These included the following:

- Amending § 8.1 to modify the definition of *employee* to include both current and former employees.
- Amending § 8.3(a)(2) to provide that a demand for testimony or records expressly include a statement of why the release of information would not be contrary to an interest of the Department or the United States.

There are no differences between the NPRM and these final regulations.

#### **Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed regulations. An analysis of the comments follows.

*Comment:* One commenter expressed support for the proposed changes.

*Discussion:* We appreciate this statement of support.

*Change:* None.

*Comment:* One commenter requested that we clarify the definition of *employee* in § 8.2 by changing the definition's structure to a listing so that

former employees are a specific category under the definition.

*Discussion:* In the definition of *employee* in § 8.2, we added the words "or former" between the words "current" and "employee" to clarify that the regulations concerning disclosure or production of agency materials or information in judicial or administrative proceedings in response to a judicially enforceable subpoena or demand apply to both current and former employees. We do not believe that a listing, within this definition, would add additional clarity.

*Change:* None.

#### **Executive Order 12866**

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM at 72 FR 72977 and 72978.

#### **Paperwork Reduction Act of 1995**

These regulations do not contain any information collection requirements.

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