

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

[Docket No. USCG-2010-0012]

RIN 1625-AA00

**Safety Zones, Large Cruise Ships; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0; New Orleans, LA****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a moving safety zone around large cruise ships as they transit the Lower Mississippi River between the Port of New Orleans Cruise Ship Terminal, mile marker 96.0 and the Southwest Pass Sea Buoy. The proposed moving safety zone extends from bank to bank encompassing one-mile ahead and one-mile astern of each large cruise ship. This safety measure is necessary to protect persons and vessels from the potential safety hazards associated with congested maritime traffic on the Lower Mississippi River.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 18, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0012 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Lieutenant Commander (LCDR) Marcie L. Kohn, Sector New Orleans, Coast Guard; telephone 504-365-2281, email [Marcie.L.Kohn@uscg.mil](mailto:Marcie.L.Kohn@uscg.mil). If you have

questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

*Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG-2010-0012), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means as instructed in the **ADDRESSES** section. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2010-0012" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2010-0012" and click "Search" Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one on or before June 18, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Marcie L. Kohn at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**Basis and Purpose**

The Coast Guard proposes to establish a moving safety zone around each large cruise ship as it transits the Lower Mississippi River between the Port of New Orleans Cruise Ship Terminal, mile marker 96.0, and the Southwest Pass Sea Buoy to address the increasing risk to safe navigation. For the purpose of this rule, the term "large cruise ship" is defined as a vessel over 100 feet in length, carrying more than 500 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or

disembarked in the United States or its territories.

The marine transportation system on the lower Mississippi river has seen a sustained growth over the years and there are more vessels on the river than ever before. If a marine accident occurs involving a large cruise ship there is a significantly higher potential for loss of life than with any other type of commercial vessel. Therefore to mitigate the risks and consequences associated with the higher traffic, the reduction of navigable space, and to protect lives, the Coast Guard proposes a moving safety zone around each large cruise ship. This proposed rule is intended to establish early passing or overtaking arrangements thus increasing the time available for safe maneuvering.

#### Discussion of Proposed Rule

Nothing in this proposed rule supersedes the United States Coast Guard Navigation Rules. This rule proposes implementing a moving safety zone extending from bank to bank, encompassing one-mile ahead and one-mile astern of each large cruise ship transiting the Lower Mississippi River between mile marker 96.0 and the Southwest Pass Sea Buoy. This proposed rule is intended to protect persons and vessels from the potential safety hazards associated with congested maritime traffic on the Lower Mississippi River. All persons or vessels will be prohibited from entering this safety zone, with the following exceptions. Moored or anchored vessels will be permitted to remain in their current positions. Fleet vessels will be permitted to continue operations. Permission to enter the safety zone will be obtained by making passing arrangements with the pilot on board the large cruise ship. The Captain of the Port New Orleans, (COTP) will use broadcast notices to mariners to notify vessel operators when the safety zone is in place. The pilot onboard the large cruise ship will be authorized to allow other vessels to enter the safety zone when necessary.

#### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

#### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving

Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders. The impacts on routine navigation are expected to be minimal. The proposed moving safety zones will not interfere with a vessel's ability to make passing and overtaking arrangements. Routine navigation around and near the proposed safety zones will not be impacted. The proposed moving safety zone is intended to enable early notification of passing or overtaking arrangements, providing additional time and opportunity to negotiate navigational arrangements and to maneuver without causing delay in transit for both the large cruise ship and the other vessels operating in the area.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed moving safety zones are intended to enable early notification that passing or overtaking arrangements may be necessary, providing additional time and opportunity to negotiate navigational arrangements, giving both vessels sufficient time to maneuver without causing delay in transit.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Lower Mississippi River between mile marker 96.0, New Orleans, LA and the Southwest Pass Sea Buoy during large cruise ship transits.

If you are a small business entity and are significantly affected by this regulation please contact Lieutenant Commander (LCDR) Marcie L. Kohn, Sector New Orleans, at 504–365–2281 or email [Marcie.L.Kohn@uscg.mil](mailto:Marcie.L.Kohn@uscg.mil).

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 want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 LCDR Marcie L. Kohn. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call 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 (adjusted for inflation) or more in any one year. Though this proposed 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 proposed rule would 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 proposed 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### *Environment*

We have analyzed this proposed 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 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing, disestablishing or changing a regulated navigation area and as such is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. A preliminary “Environmental Analysis Check List” supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### **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 proposes to amend 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. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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. Add § 165.839 to read as follows:

#### **§ 165.839 Safety Zone; Large Cruise Ships; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, LA.**

(a) *Location.* Within the Lower Mississippi River and Southwest Pass, moving safety zones are established around all large cruise ships transiting between the Southwest Pass Entrance Lighted Buoy “SW”, at approximate position 28[deg]52[deg]42[sec] N, 89[deg]25[deg]54[sec] W [NAD 83] and Lower Mississippi River mile marker

96.0 in New Orleans, Louisiana. The moving safety zone extends bank to bank, encompassing all waters one-mile ahead and one-mile astern of a large cruise ship. The zone remains in effect during the entire transit of the large cruise ship.

(b) *Definitions.* For the purpose of this rule, the term “large cruise ship” is defined as a vessel over 100 feet in length, carrying more than 500 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel may enter or remain in the Safety Zone except for vessels authorized by the Captain of the Port or Designated Representatives, except as provided for in paragraph (c)(2) of this section.

(2) For this section the Pilot directing the movement of the large cruise ship under the authority of the master has the authority to allow other vessels to enter the safety zone when necessary.

(2) All vessels are prohibited from entering this safety zone unless authorized as follows:

(i) Vessels that have made suitable passing or overtaking arrangements with the pilot onboard the large cruise ship may enter into this safety zone in accordance with those agreed upon arrangements.

(ii) Moored vessels or vessels anchored in a designated anchorage area may remain in their current moored or anchored position while the large cruise ship transits the area.

(iii) Barge Fleets or vessels working a fleet may continue their current operations while the large cruise ship transits the area.

(3) Vessels requiring a deviation from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at (504) 365–2210.

Dated: March 26, 2012.

**P.W. Gautier,**

*Captain, U.S. Coast Guard, Captain of the Port New Orleans.*

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**BILLING CODE 9110–04–P**