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(i) System Identifier: CIG-21

(1) System name: Congressional Correspondence Tracking System.

(2) Exemption: During the processing of a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7)

(4) Reasons: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: February 11, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP New Orleans-03-029]

RIN 1625-AA00

#### **Safety Zone; Lower Mississippi River, Mile Marker 88.1 to 90.4 Above Head of Passes, New Orleans, LA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Lower Mississippi River (LMR), beginning at mile marker 88.1 and ending at mile marker 90.4 Above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the Cruise Ship (C/S) CONQUEST beneath the Entergy Corporation power cables located at mile marker 89.2. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

**DATES:** This rule is effective from February 16, 2004, to February 16, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans 03-024] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, LA, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Richard Paciorka, Marine Safety Office New Orleans, at (504) 589-4222.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with the weekly upbound and downbound transit of the Cruise

Ship (C/S) CONQUEST under the Entergy Corporation power cable, Lower Mississippi River (LMR), mile marker 89.2, Above Head of Passes, New Orleans, Louisiana.

#### **Background and Purpose**

On August 18, 2003, the Coast Guard published a temporary final rule entitled "Safety Zone; Lower Mississippi River, Above Head of Passes, Mile Marker 88.1 to 90.4, New Orleans, LA" in the **Federal Register** (68 FR 49356). The temporary final was established to protect persons, mariners and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST as it proceeds beneath the Entergy Corporation power cables located at mile marker 89.2. This temporary final rule expired at 8 p.m. C.s.t. on January 11, 2004. The Captain of the Port New Orleans has determined the safety hazards associated with the C/S CONQUEST's inbound and outbound transit underneath the power cables continue to exist.

The C/S CONQUEST has an air draft of 210 feet and is home ported at the Julia Street Wharf located at mile marker 95.3. The Entergy Corporation power cables are at a height of 229.9 feet North American Vertical Datum (NAVD) at the center of the LMR. The power cables increase in height to a maximum of 366.4 feet NAVD on the East bank of the LMR and a maximum of 361.1 feet NAVD on the West bank of the LMR. The C/S CONQUEST requires a minimum air gap of 10 feet between itself and the Entergy Corporation power cables to prevent electrical arcing. When the river stage at the Carrollton gauge reads 10 feet or higher, the vessel must maneuver within 400 to 600 feet of the East bank or within 400 to 700 feet of the West bank to maintain the minimum air gap necessary to safely transit under the Entergy Corporation power cables. Other vessels transiting between mile marker 88.1 and 90.4 may restrict the maneuverability of the C/S CONQUEST through the safe passage lanes and possibly result in harm to life or damage to the cruise ship, the power cable, or nearby vessels.

This safety zone is needed to protect persons, mariners and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST as it proceeds beneath the Entergy Corporation power cables located at mile marker 89.2. This rule would only be enforced when the Carrollton gauge reads 10 feet or higher.

It is anticipated that the Entergy Corporation will complete the burial of

new power cables and removal of existing overhead cables by January 2005. Once this occurs, the safety hazards that necessitate this safety zone will cease to exist.

#### Discussion of Rule

This rule establishes a temporary safety zone for the LMR, beginning at mile marker 88.1 and ending at mile marker 90.4 Above Head of Passes, extending the entire width of the river. This safety zone will only be enforced when the river stage at the Carrollton gauge reads 10 feet or higher. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST as it proceeds beneath the Entergy Corporation power cables located at mile marker 89.2. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative. This prohibition would be effective one-half hour prior to the C/S CONQUEST arriving at the power cables and would continue in effect until the vessel safely passes underneath the power cables. The C/S CONQUEST is anticipated to arrive at the power cables at 3:45 a.m. and at 6:30 p.m. every Sunday. These arrival times are based on the predicted cruise schedule for the C/S CONQUEST and area subject to change. The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

This rule also prohibits vessels from anchoring in the New Orleans Emergency Anchorage below mile marker 90.4, which is the location of Chalmette Slip, and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock. Vessels anchored in this area could restrict the maneuverability of the C/S CONQUEST through safe passage lanes and possibly result in harm to life or damage to the cruise ship, the power cables, or nearby vessels. Vessels anchored within the New Orleans Emergency Anchorage are already required by 33 CFR 110.195(a)(16) to obtain permission from the Captain of the Port New Orleans prior to anchoring. The New Orleans General Anchorage extends from mile 90.1 to 90.9 on the LMR, and only 0.3 miles of the anchorage will be affected by this rule. This prohibition would be effective two hours prior to the C/S CONQUEST's arrival or departure from its berth and would remain effective until the vessel safely passes under the power cables.

This rule allows moored vessels to remain moored within the safety zone.

#### 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 procedures of DHS is unnecessary. The Coast Guard has met with members of the local maritime industry including Carnival Cruise Lines, Entergy, the New Orleans Port Commission, pilots associations, owners of waterfront facilities located within or adjacent to the zone as well as agents and shipping companies to discuss safety concerns associated with the transit and measures to reduce the impact of the safety zone on the local maritime community.

This rule only affects maritime traffic for short periods of time. The impact on routine navigation is expected to be minimal as the safety zone will only be in effect for two hours, twice each week. Additionally, this safety zone will only be enforced when the Carrollton gauge reads 10 feet or higher. The Captain of the Port New Orleans or a designated representative may permit movements within the safety zone that do not impact the passage of the C/S CONQUEST, further limiting the impact of the safety zone.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule has 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 does not have a significant economic impact on a substantial number of small entities. This rule affects the following entities, some of which may be small entities: the owners or operators of crew boats, towing vessels, deep draft vessels, and occasional commercial fishing vessels intending to transit or anchor between

mile marker 88.1 and mile marker 90.4, Lower Mississippi River, Above Head of Passes, while the C/S CONQUEST is transiting this area upbound or downbound. This safety zone does not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule would only be enforced when the river stage at the Carrollton gauge reads 10 feet or higher, (2) The safety zone would only be enforced during the period of time it takes the C/S CONQUEST to transit the area of the safety zone, which is estimated to take approximately two hours in each direction, (3) The C/S CONQUEST normally makes these transits once a week, usually on Sunday, and (4) the Captain of the Port New Orleans or a designated representative may permit movements within the zone that do not impact the passage of the C/S CONQUEST, further limiting the impact of the zone.

If you are a small business entity and are significantly affected by this regulation please contact LT Richard Paciorka, Marine Safety Office New Orleans, at (504) 589–4222.

#### 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 this rule so that they can 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).

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

#### Taking of Private Property

This rule does not affect 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. It has not been designated by the Administrator of the Office of

Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### 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 “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(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.

■ 2. Reinstate and revise temporary § 165.T08–090 to read as follows:

#### § 165.T08–090 Safety Zone; Lower Mississippi River, Mile Marker 88.1 to 90.4, Above Head of Passes, New Orleans, LA.

(a) *Location.* The following area is a safety zone: the entire width of the Lower Mississippi River, Above Head of Passes, beginning at mile marker 88.1, which is the location of the lower end of the Algiers Lock fore bay, and ending at mile marker 90.4, which is the location of the Chalmette Slip and 350 yards upriver of the Belle Chasse Launch Service’s West Bank Dock.

(b) *Effective dates.* This section is effective from February 16, 2004 to February 16, 2005.

(c) *Enforcement period.* This rule will be enforced only when the Carrollton gauge reads 10 feet or higher during the effective period. When the Carrollton gauge reads 10 feet or higher, this section will be enforced every Sunday from 1:45 a.m. to 3:45 a.m. and from

4:30 p.m. to 6:30 p.m. These periods of enforcement are based on the predicted cruise schedule for the C/S CONQUEST and are subject to change. The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all people, mariners and vessels 30 minutes prior to the C/S CONQUEST’s arrival at the power cables, unless authorized by the Captain of the Port New Orleans.

(2) Vessels are prohibited from anchoring in the New Orleans Emergency Anchorage or the New Orleans General Anchorage below mile marker 90.4, which is the location of the Chalmette Slip, and 350 yards upriver of the Belle Chasse Launch Service’s West Bank Dock. This prohibition is effective two hours prior to the arrival and departure of the C/S CONQUEST or until it safely passes under the power cables.

(3) Moored vessels are permitted to remain within the safety zone.

(4) The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(5) Vessels requiring entry into or passage through the zone during the enforcement period must request permission from the Captain of the Port New Orleans or a designated representative. Designated representatives include the Vessel Traffic Center (VTC) and on-scene U.S. Coast Guard patrol personnel. The VTC may be contacted on VHF Channel 67 or by telephone at (504) 589–2780. On-scene U.S. Coast Guard patrol personnel may be contacted on VHF channel 67.

(6) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans, the Vessel Traffic Center, and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: December 22, 2003.

**R.W. Branch,**

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

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**BILLING CODE 4910–15–P**