

**§ 165.1183 Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California.**

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the San Francisco Bay and Delta ports.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship and tank ship that is anchored at a designated anchorage within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W and 37°46. 5' N, 122°35.2' W, respectively);

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship and tank ship that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W and 37°46. 5' N, 122°35.2' W, respectively); and

(3) All waters, extending from the surface to the sea floor within a 100-yard radius around any cruise ship and/or tank ship that is underway shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W and 37°46. 5' N, 122°35.2' W, respectively).

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 510-437-3073 or on VHF-FM 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 or his or her designated representative.

(3) When a cruise ship and/or tank vessel approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's and/or tank vessel's

security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement as necessary.

Dated: December 20, 2002.

**G.M. Swanson,**

*Captain, Coast Guard, Captain of the Port, San Francisco Bay.*

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**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

**[COTP Los Angeles-Long Beach 02-010]**

**RIN 2115-AA97**

**Security Zones; Liquefied Hazardous Gas Tank Vessels, San Pedro Bay, CA**

**AGENCY:** Coast Guard, (DOT).

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing moving and fixed security zones around liquefied hazardous gas (LHG) tank vessels located on San Pedro Bay, California, near the ports of Los Angeles and Long Beach. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels are prohibited from entering these security zones without permission of the Captain of the Port.

**DATES:** This rule is effective from 11:59 p.m. PST on December 21, 2002, to 11:59 p.m. PST on March 21, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 02-010 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732-2020.

**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 because the threat of maritime attacks is real and imminent.

The October 6, 2002, attack of a French oil tanker off the coast of Yemen and the continuing threats to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 in the **Federal Register** (67 FR 56215, September 3, 2002) demonstrate continued disturbances that further endanger the security and international relations of the United States. See also *Continuation of the National Emergency with Respect to Certain Terrorist Attacks* of September 13, 2002 in the **Federal Register** (67 FR 58317); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism* September 20, 2002 in the **Federal Register** (67 FR 59447). As a result, a heightened level of security continues to be maintained around all liquefied hazardous gas (LHG) tank vessels near the ports of Los Angeles and Long Beach. These security zones are needed to protect the United States and more specifically the people, waterways, and properties near San Pedro Bay.

Although we had anticipated using the effective period of the current temporary final rule to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period for 3 months to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. This extension preserves the *status quo* within the Port while a permanent rule is developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the al Qaeda organization and other similar

organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a LHG tank vessel would have on the public interest, the Coast Guard has temporarily suspended current LHG safety zone regulations and temporarily replaced them with security zones around and under any LHG tank vessels entering, departing, or moored within the ports of Los Angeles and Long Beach. These security zones will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against LHG tank vessels.

Current regulations issued under 33 CFR 165.1151 provide for safety zones around LHG tank vessels that are anchored, moored, or underway near the Los Angeles-Long Beach port areas. However, these safety zones are inadequate to address increased security requirements for LHG tank vessels.

On January 28, 2002, we published a temporary final rule (TFR) entitled "Security Zones; San Pedro Bay, California" in the **Federal Register** (67 FR 3814). In that rule, which expired on June 15, 2002, we temporarily replaced the LHG safety zones with security zones of a similar size and location.

On June 19, 2002, we published a TFR entitled "Security Zones; Liquefied Hazardous Gas Tank Vessels, San Pedro Bay, CA" in the **Federal Register** (67 FR 41625). In that rule, which is set to expire on December 21, 2002, we continue to temporarily replace the safety zones with security zones for LHG tank vessels near Los Angeles-Long Beach. Although we had anticipated using the effective period of this TFR to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period again to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. Accordingly, this rulemaking extends the effective period of the temporary security zones for 3 months.

#### Discussion of Rule

This rule establishes a security zone in the waters of San Pedro Bay around all LHG tank vessels that are anchored, moored, or underway within the Los Angeles or Long Beach port area. These security zones will take effect upon entry of any LHG tank vessel into the waters within 3 nautical miles outside the Federal breakwaters encompassing San Pedro Bay and will remain in effect until that vessel departs the 3 nautical

mile limit. Vessels covered by a security zone can be additionally identified by an on-scene escorting law enforcement vessel with a blue flashing light. The following areas are security zones:

(1) The waters within a 500-yard radius around a LHG tank vessel that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within 3 nautical miles of the breakwater;

(2) The waters within a 500 yard radius around a LHG tank vessel that is moored at any berth within the Los Angeles or Long Beach port area;

(3) The waters within 1,000 yards ahead and 500 yards on all other sides of a LHG tank vessel that is underway on the waters either inside the Federal breakwaters bounding San Pedro Bay or on the waters within 3 nautical miles of the breakwater.

These security zones are needed for national security reasons to protect LHG tank vessels, the public, transiting vessels, adjacent waterfront facilities and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these moving or fixed security zones is prohibited unless authorized by the Captain of the Port. Vessels already moored or anchored when these security zones take effect will not be required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be 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 \$27,500 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, and a civil penalty of not more than \$25,000 for each day of a continuing violation.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

#### 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 Transportation (DOT) (44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway for a limited period of time. Delays, if any, are expected to be less than 30 minutes in duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

#### 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.

We expect this rule will affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in a small portion of the ports of Los Angeles or Long Beach near a LHG tank vessel that is covered by these security zones. The impact to these entities would not, however, be significant since these security zones will encompass a small portion of the waterway for a limited period of time. Delays, if any, are expected to be less than 30 minutes in duration.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provision or operations for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 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. 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 considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because we are establishing security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

#### § 165.1151 [Suspended]

2. Temporarily suspend § 165.1151 from 11:59 p.m. PST December 21, 2002 through 11:59 p.m. PST March 21, 2003.

3. Revise temporary § 165.T11-066(f) to read as follows:

#### § 165.T11-066 Security Zones; Liquefied Hazardous Gas Tank Vessels, San Pedro Bay, California.

\* \* \* \* \*

(f) *Effective period.* This section is effective from 11:59 p.m. PST on December 21, 2002, through 11:59 p.m. PST on March 21, 2003.

\* \* \* \* \*

Dated: December 20, 2002.

**J.M. Holmes,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.*

[FR Doc. 02-33017 Filed 12-30-02; 8:45 am]

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#### POSTAL SERVICE

#### 39 CFR Part 266

#### Revision of Regulations To Exempt Privacy Act System of Records

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Postal Service is amending its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a.