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Jay J. Pardee,

Manager, Engine and Propeller Directorate,  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 909

[Docket No. 011219305-1305-01]

RIN 0648-AP77

#### Regulations Relating to Disclosure of Information and Employee Testimony in Litigation; Removal of Obsolete Regulations

**AGENCY:** National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) issues this final rule to remove and reserve regulations concerning the policies and procedures relating to the disclosure of information and employee testimony in litigation not involving the United States. These regulations are removed because they have been superseded by other regulations. The intended effect is to ensure that NOAA policies and procedures are consistent and not redundant with other regulations of the Department of Commerce.

**DATES:** Effective February 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Glenn E. Tallia, NOAA Senior Counselor for Atmospheric and Space Services and Research (GCW), SSMC 3, Mail Stop 15861, 1315 East-West Highway, Silver Spring, MD 20910; (301) 713-1337.

#### SUPPLEMENTARY INFORMATION:

##### Background

NOAA issues this final rule to remove provisions from its internal conduct regulations, codified at 15 CFR part 909. This part contains policies and procedures regarding disclosure of information and employee testimony in litigation not involving the United States. This part is removed and reserved because it has been superseded by regulations on the same topic promulgated by the Department of Commerce, and codified at 15 CFR part 15, subpart B.

## Classification

### Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

### Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(A), prior notice and an opportunity for public comment and not required for this rule of agency organization, management and procedures. Further, this rule of agency organization, management and procedures is not a substantive rule, and is therefore not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

### Regulatory Flexibility Act

As this rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

### Paperwork Reduction Act

This rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

### List of Subjects in 15 CFR Part 909

Courts, Government employees.

Accordingly, for the reasons set forth in the preamble and under the authority contained in 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515 and 1518; Reorganization Plan No. 5 of 1950; 3 CFR, 1949-1953 Comp., p. 1004; and 44 U.S.C. 3101; remove and reserve 15 CFR part 909.

Dated: February 14, 2002.

Craig R. O'Connor,

Acting General Counsel, NOAA.

[FR Doc. 02-4058 Filed 2-19-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 01-012]

RIN 2115-AA97

#### Security Zones; San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing moving and fixed security

zones extending 100 yards around all cruise ships and tank ships that enter, are moored in, or depart from the San Francisco Bay and Delta ports, California. This security zone is needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

**DATES:** The regulation is effective from 11:59 p.m. PST on December 21, 2001 to 11:59 p.m. PDT on June 21, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP San Francisco Bay 01-012 and are available for inspection or copying at Coast Guard 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 Ross Sargent, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked and flown into the World Trade Center in New York, New York, inflicting catastrophic human casualties and property damage. A similar attack was inflicted upon the Pentagon in Arlington, Virginia, while a fourth commercial aircraft was hijacked and crashed in rural western Pennsylvania on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the potential catastrophic impact of an attack on cruise ships and tank ships, this rulemaking is urgently required to prevent possible terrorist strikes against these vessels within San Francisco Bay and Delta ports. The delay inherent in the NPRM process is contrary to the public interest insofar as it would render cruise ships and tank ships in San Francisco and Delta ports vulnerable to subversive activity, sabotage and terrorist attack.

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

## Background and Purpose

Based on the September 11, 2001, terrorist hijackings and attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the San Francisco Bay and Delta ports, against cruise ships and tank ships entering, departing, or moored within the San Francisco Bay and Delta ports. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard has established a security zone around cruise ships and tank ships to protect persons, transiting vessels, adjacent waterfront facilities, and the adjacent land of the San Francisco Bay and Delta ports. These security zones are necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, or waters of the United States near the San Francisco Bay and Delta, California.

This zone will be enforced by the official patrol (Coast Guard commissioned, warrant or petty officers) onboard Coast Guard vessels and patrol craft. The official patrol may also be onboard patrol craft and resources of any government agency that has agreed to assist the Coast Guard in the performance of its duties. Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port (COTP) or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board any vessel in a security zone without the permission of the COTP.

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 for not more than 6 years and a fine of not more than \$250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, 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 (class C felony).

This security zone prohibits all vessels and people from approaching cruise ships and tank ships that are underway or moored in the San Francisco Bay and Delta ports. Specifically, no vessel or person may close to within 100 yards of a cruise ship or tank ship that is entering, moored, or departing the San Francisco Bay and Delta ports.

A security zone is automatically activated when a cruise ship or tank ship passes a line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9'N, 122°35.4'W & 37°46.5'N, 122°35.2'W, respectively) while entering port and remains in effect while the vessel is moored within in the San Francisco Bay and Delta ports. When activated, this security zone will encompass a portion of the waterway described as a 100-yard radius around a cruise ship or tank ship in the San Francisco Bay and Delta ports. This security zone is automatically deactivated when the cruise ship or tank ship passes a line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9'N, 122°35.4'W & 37°46.5'N, 122°35.2'W, respectively) on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

## 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).

The size of the zones are the minimum necessary to provide adequate protection for cruise ships and tank ships, their crews, other vessels and crews operating in the vicinity of cruise ships and tank ships, adjoining areas and the public. These zones will encompass a small portion of the waterway for a limited duration. Also, vessels and people may be allowed to enter the zones on a case-by-case basis with authorization from the Captain of the Port. Any hardships experienced by persons or vessels are considered minimal compared to the national

interest in protecting cruise ships and tank ships, their crews and the public.

## 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. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. When a cruise ship or tank ship is at anchor, vessel traffic will have ample room to maneuver around the security zones. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options 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. 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), Reports and record keeping 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, 160.5; 49 CFR 1.46.

2. Add a new temporary § 165.T11–098 to read as follows:

### § 165.T11–098 Security Zones; San Francisco Bay and Delta ports.

(a) *Regulated area.* Temporary moving security zones are established as a 100-yard radius around all cruise ships and tank ships while entering or departing the San Francisco Bay and Delta ports. These moving security zones are activated when the cruise ship or tank ship passes a line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′N, 122°35.4′W & 37°46.5′N,

122°35.2′W, respectively) while entering the Port of San Francisco. Temporary fixed security zones are established as a 100 yard radius around all cruise ships and tank ships docked in the San Francisco Bay and Delta ports. This security zone is deactivated when the cruise ship or tank ship passes a line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′N, 122°35.4′W & 37°46.5′N, 122°35.2′W, respectively) on its departure from the Port of San Francisco.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, the following rules apply to security zones established by this section:

(i) No person or vessel may enter or remain in a security zone without the permission of the Captain of the Port;

(ii) Each person and vessel in a security zone shall obey any direction or order of the Captain of the Port;

(iii) The Captain of the Port may take possession and control of any vessel in a security zone;

(iv) The Captain of the Port may remove any person, vessel, article, or thing from a security zone;

(v) No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port; and

(vi) No person may take or place any article or thing upon any waterfront facility in a security zone without the permission of the Captain of the Port.

(2) The Captain of the Port will notify the public via published notice to mariners.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(4) The regulations of this section will be enforced by the Captain of the Port San Francisco Bay, or his authorized representative.

(c) *Dates.* This section becomes effective at 11:59 p.m. PST on December 21, 2001, and will terminate at 11:59 p.m. PDT on June 21, 2002.

Dated: December 21, 2001.

**P. V. Neffenger,**

*Commander, U.S. Coast Guard, Alternate Captain of the Port, San Francisco Bay, California.*

[FR Doc. 02–4085 Filed 2–19–02; 8:45 am]

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