

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

[CGD14-04-116]

RIN 1625-AA87 (Formerly 1625-AA00)

**Security Zones; Oahu, Maui, HI, and Kauai, HI****AGENCY:** Coast Guard, DHS.**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is issuing a supplement to our notice of proposed rulemaking (NPRM) published on May 20, 2004 (69 FR 29114). The NPRM underwent further Coast Guard review after its comment period that produced revisions significant enough to merit this supplement to our original proposal. This supplement is intended to announce the revisions and reopen the comment period.

The Coast Guard proposes to make changes to existing permanent security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, Hawaii. These revised security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature and will extend from the surface of the water to the ocean floor. Some of the revised security zones would be continuously activated and enforced at all times, while others would be activated and enforced only during heightened threat conditions. Entry into these Coast Guard security zones while they are activated and enforced would be prohibited unless authorized by the Captain of the Port.

**DATES:** Comments and related material must reach the Coast Guard on or before August 8, 2005.

**ADDRESSES:** You may mail comments and related material to Commanding Officer, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819-4398. Sector Honolulu maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection and copying at Coast Guard Sector Honolulu, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) Quincey

Adams, U.S. Coast Guard Sector Honolulu at (808) 842-2600.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD14-04-116), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. To provide additional notice, we will publicize this supplemental proposal in the Local Notice to Mariners, available at the following Web site: <http://www.navcen.uscg.gov/1nm/d14>.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we would hold one at a time and place announced by separate notice in the **Federal Register**.

**Regulatory History**

On May 20, 2004, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Security Zones: Oahu, Maui, Hawaii and Kauai, Hawaii," in the **Federal Register** (69 FR 29114). We received five letters commenting on the proposed rule. No public meeting was requested, and none was held. The comment period on that proposed rule ended July 19, 2004, but the comment period has been reopened because we are seeking comments on this SNPRM.

**Background and Purpose**

The terrorist attacks against the United States that occurred on September 11, 2001, have emphasized the need for the United States to establish heightened security measures in order to protect the public, ports and waterways, and the maritime transportation system from future acts of terrorism or other subversive acts. The terrorist organization Al Qaeda and

other similar groups remain committed to conducting armed attacks against U.S. interests, including civilian targets within the United States. Accordingly, the President has continued the national emergencies he declared following the attacks (67 FR 58317, September 13, 2002)(continuing national emergency with respect to terrorist attacks); (68 FR 55189, September 22, 2003)(continuing national emergency with respect to persons who commit, threaten to commit, or support acts of terrorism). Pursuant to the Magnuson Act, 50 U.S.C. 191, *et seq.*, the President also has found that the security of the United States is and continues to be endangered by the September 11, 2001 attacks (E.O. 13272, 67 FR 56215, September 3, 2002). National security and intelligence officials warn that future terrorist attacks are likely.

In response to this threat, on April 25, 2003, the Coast Guard established permanent security zones in designated waters surrounding the Hawaiian Islands (68 FR 20344, April 25, 2003). These security zones have been in operation for more than 2 years. We have conducted periodic review of port and harbor security procedures and considered the oral feedback that local vessel operators gave to Coast Guard units enforcing the zones. In response, the Coast Guard is proposing to continue most of the current security zones, but to reduce the size and scope of some of the zones to afford acceptable protection to critical assets and maritime infrastructure while minimizing the disruption to maritime commerce and the inconvenience to small entities.

This proposed rule would create permanently-existing security zones in the waters surrounding the islands of Oahu, Maui, Kauai, and Hawaii. Specifically, 13 permanent security zones would affect the following locations and facilities: (1) Honolulu Harbor, Oahu; (2) Honolulu Harbor General Anchorages B, C, and D, Oahu; (3) Kalihi Channel and Keehi Lagoon, Oahu; (4) Honolulu International Airport, North Section, Oahu; (5) Honolulu International Airport, South Section, Oahu; (6) Barbers Point Offshore Moorings, Oahu; (7) Barbers Point Harbor, Oahu; (8) Kahului Harbor, Maui; (9) Lahaina, Maui; (10) Hilo Harbor, Hawaii; (11) Kailua-Kona Harbor, Hawaii; (12) Nawiliwili Harbor, Lihue, Kauai; and (13) Port Allen, Kauai. When activated and enforced by the Captain of the Port or his or her representative, persons and vessels must not enter these security zones without the express permission of the Captain of the Port.

### Discussion of Comments and Changes

In response to our initial proposed rule published on May 20, 2004, the Coast Guard received five letters. Two letters from the State of Hawaii are in favor of the rulemaking and contained no objections. One letter from a maritime association is also in favor with no objections. These three letters recognize the need for the security zones and reiterate the Coast Guard's reasons for proposing them, raising no additional issues. The remaining two letters raise issues that are discussed below.

A letter from a Hawaii-based oil company is in favor of the proposed changes to the security zones, but suggests that the Coast Guard include a provision allowing such companies to submit an advance transportation schedule to the Captain of the Port that would permit fuel barges to conduct transit and fuel-transfer operations in port within a large cruise ship (LCS) security zone under normal circumstances. The letter also states that there should be more explicit language assuring minimal interruption of businesses that conduct routine operations in the commercial harbors when the Maritime Security (MARSEC) Level is not elevated.

*Coast Guard Response:* For these security zones to be effective in safeguarding ports, facilities, and vessels from acts of terrorism and sabotage, the Captain of the Port must have access to accurate and timely information regarding current vessel traffic in any designated security zone. Paragraph 165.1407(c)(2) in the proposed rule below specifically authorizes the public to employ either oral or written means to request permission to enter and operate within a designated security zone. This proposed rule does not preclude the submission of an accurate operating schedule as a means of obtaining permission to enter the security zones created by this rule. Any party desiring to submit a schedule in writing to the Captain of the Port for approval may call the Sector Honolulu Command Center at (808) 842-2600. Approval of such requests would be at the discretion of the Captain of the Port.

The final letter commenting on the proposed changes to existing security zones is from a maritime association and raises three separate issues:

*Issue 1:* The letter comments that, because the port facilities in Hilo, Kahului, and Nawiliwili Harbors are essentially within 100 yards of each other, the security zone around a large cruise ship moored at one of those

facilities would preclude the simultaneous use of that harbor by any other vessel, especially the tugs and barges that frequently transit the area. The comment emphasizes that tug and barge operations are the main "life line" of the outlying islands, and that LCS traffic is expected to increase, with no increase in facilities, so the security zones around these ships will soon have an even greater negative impact on such operations.

*Coast Guard Response:* The proposed security zones would not preclude simultaneous use of a harbor when an LCS is moored at one of the facilities. We acknowledge that the proposed security zones around large cruise ships occasionally may cause inconvenience to other vessels and operators within the immediate area because they would have to get permission before entering those zones. We do not agree, however, that this inconvenience is unreasonable considering the benefits provided by the security zones.

With their high profile and passenger-carrying capacity, large cruise ships are attractive targets for acts of sabotage and terrorism, particularly when they are stationary at a pier or mooring. Nevertheless, in response to this comment, we have considered reducing the size of the zones around stationary LCSs, but we determined that an effective security zone must be large enough to allow security personnel to identify and respond to potential threats. Moreover, any person affected by the security zone around a large cruise ship may request permission to enter and transit the zone by contacting the Sector Honolulu Command Center via VHF channel 16 (156.8 Mhz) or phone: (808) 842-2600. Operators who frequently operate in the vicinity of a security zone would have the option of submitting a written schedule for advance approval to minimize any potential disruption.

*Issue 2:* The letter comments that the language in the NPRM about security zones around large cruise ships and designated enforcement zones is confusing, as is much of the other terminology, and certain paragraphs of the proposed rule should be reworded.

*Coast Guard Response:* We agree and have extensively revised both the wording and organization of our proposed rule. We separated the zones by island and gave each of the four islands a separate section in the CFR. This change allows us to focus the proposed regulation paragraphs on LCS zones for the islands of Maui, Kauai, and Hawaii, because the LCS zones are proposed for those islands only; none are proposed for Oahu. This change also

allows us to focus the regulation and notice paragraphs in the Oahu CFR section on the three Oahu zones there that are enforced only upon a rise in the MARSEC level or when the Captain of the Port has determined there is a heightened risk of a transportation security incident.

As for wording changes, we inserted the word "activated" several times to help discern when certain security zones would be enforced. It is important to note, however, that these proposed security zones would be permanently established, and that the word "activated" is only meant to distinguish whether the permanently-established zone is subject to enforcement. We made numerous similarly non-substantive wording changes for this supplemental NPRM that do not change the meaning or intent of our initial proposed rule but hopefully improve the clarity of the proposed rule in response to this letter.

*Issue 3:* The letter suggests removing the Honolulu International Airport Security Zone from Category 1 (zones subject to enforcement at all times) and placing it in Category 2 (zones subject to enforcement only during heightened threat conditions, as provided in this proposed rule). This area is planned for future ocean recreation expansion and it should not be continuously and permanently removed from public use. Alignment with the adjacent Keehi Lagoon Security Zone (Category 2) would preserve public use of the entire Keehi Lagoon area for future recreational and commercial improvements.

*Coast Guard Response:* The security zone nearest Honolulu International Airport in particular must remain a Category 1 zone because all major airports are possible terrorist targets. The Category 1 designation of this area is specifically meant to protect the Honolulu International Airport, as well as all the aircraft and people working or transiting the facility. Designating this area a Category 2 zone would compromise security by removing the continuous waterside buffer around the airport afforded by the Category 1 designation. Those wishing to enter the zone, however, would only need to seek and obtain prior approval. The Captain of the Port would not manage security zones solely based on possible future scenarios but rather adjust as appropriate to the current threat situation so security can be maintained while minimizing disruption to commercial and recreational traffic.

The comments received affected this proposal to the extent described above, but we have made additional

substantive changes to the NPRM published on May 20, 2004 (69 FR 29114) that necessitated this supplemental notice. We are now proposing an additional security zone, described in this proposed rule, § 165.1407(a)(4)(ii), as *Honolulu International Airport, South Section*. This new security zone, encompassing Honolulu Harbor anchorages B, C, and D, would be a Category 2 zone, subject to enforcement only in times of raised MARSEC levels or other threats. We have determined there is a need to propose this zone to create an additional protective buffer around the airport when necessary.

The separately-designated *Honolulu Harbor Anchorages B, C, and D* security zone would remain the same as in our initial proposed rule: Limited to the waters extending 100 yards in all directions from vessels over 300 gross tons anchored there. The 100-yard security zone around those vessels would still be activated and enforced at all times regardless of whether an emerging threat has necessitated the additional activation and enforcement of the encompassing *Honolulu International Airport, South Section* security zone proposed for increased airport protection.

The name of the *Honolulu International Airport* security zone in our initial proposed rule is changed in this proposal to *Honolulu International Airport, North Section*, § 165.1407(a)(4)(i), to distinguish it from the *Honolulu International Airport, South Section* proposal. The *Honolulu International Airport, North Section* security zone would remain a Category 1 zone, enforced and activated at all times, extending only about 800 yards offshore from the airport, the minimal distance required for low-level security conditions.

We also propose to eliminate an unnecessary notification requirement that was in our initial proposed rule. We have determined that the best public notification of the presence of an LCS security zone is the presence of the LCS itself, which would be obvious to operators well before they reach the 100-yard zone. Therefore, while we may use other notification methods, like a broadcast notice to mariners, the requirement to make such other notification is not in this proposal.

Additionally, in the paragraphs of our proposed rule that address permission to transit a security zone, we have now included language that eliminates the need for seaplane operators to get Coast Guard permission while they are in compliance with established Federal Aviation Administration regulations

regarding flight-plan approval. We have determined that this change is necessary to limit the communications that pilots would have to make when transiting the zones.

We have also revised our penalty paragraphs so that they are limited to referencing the statutes (33 U.S.C. 1232 and 50 U.S.C. 192) that provide violation penalties. This change would eliminate the need to amend those paragraphs every time the penalty statutes are amended.

Other changes from our initial proposed rule include the addition of the words “or hundredths” in § 165.1407(a) to more accurately describe how security-zone coordinates are expressed, and an update of Sector Honolulu’s contact information to reflect recent changes.

#### Discussion of Proposed Rule

Due to national security interests, these proposed security zones are necessary for the protection of the public, port facilities, and waterways of the Hawaiian Islands. The security zones would be located in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, Hawaii. These zones would vary in size and shape depending on the location and the protective scope of the zone. All zones, however, would extend from the surface of the water to the ocean floor.

The security zones would consist of two categories: (1) Those security zones that are subject to enforcement at all times, and (2) those security zones that are subject to enforcement only upon the occurrence of an event specified in this rule. Whenever a security zone is subject to enforcement, persons and vessels would be prohibited from entering them without the express permission of the Captain of the Port.

The first category, designated waters where security zones are subject to enforcement at all times, would include security zones in Honolulu Harbor, 33 CFR 165.1407(a)(1); Honolulu International Airport, North Section, § 165.1407(a)(4)(i); and the Barbers Point Offshore Moorings, § 165.1407(a)(5) (Tesoro Single Point Mooring and the Chevron Conventional Buoy Mooring).

The second category, designated waters where the security zones are subject to enforcement only upon the occurrence of a specific event, would consist of the security zones located at Kalihi Channel and Keehi Lagoon, Oahu, § 165.1407(a)(3); Honolulu International Airport, South Section, § 165.1407(a)(4)(ii); Barbers Point Harbor, Oahu, § 165.1407(a)(6); and the large cruise ship (LCS) security zones.

An LCS security zone would be enforced around the LCS itself when it enters one of the geographic locations (a harbor, for example) described in the proposed rule. Each zone would encompass the waters extending 100 yards in all directions from each LCS. These zones would be created in the following locations: Kahului Harbor, Maui, § 165.1408(a)(1); Lahaina, Maui, § 165.1408(a)(2); Hilo Harbor, Hawaii, § 165.1409(a)(1); Kailua-Kona, Hawaii, § 165.1409(a)(2); Nawiliwili Harbor, Lihue, Kauai, § 165.1410(a)(1); and Port Allen, Kauai, § 165.1410(a)(2).

Security zones in the Honolulu Harbor Anchorages B, C, and D, § 165.1407 (a)(2), would be enforced around any vessel in excess of 300 gross tons anchored within one of those designated anchorage areas. The security zones would extend 100 yards in all directions from any such vessel.

The security zones at Kahului Harbor, Maui; Nawiliwili Harbor, Lihue, Kauai; Port Allen, Kauai; and Hilo Harbor, Hawaii, would be subject to enforcement upon the occurrence of a specific event, namely, the arrival of an LCS, as defined in this proposed rule, at the harbor. The security zone would extend 100 yards in all directions from the LCS while it is transiting the harbor. When the LCS is anchored, position-keeping, or moored, the security zone would remain fixed, extending 100 yards in all directions from the vessel.

The security zones at Lahaina Harbor, Maui and Kailua-Kona Harbor, Hawaii, would be subject to enforcement when an LCS comes within 3 nautical miles of the harbor and would extend out 100 yards in all directions from the vessel. The 100-yard security zone around each LCS would be activated and enforced regardless of whether the cruise ship is underway, moored, position-keeping, or anchored, and would continue in effect until such time as the vessel departs the harbor and the 3-mile enforcement area.

The security zones at Kalihi Channel and Keehi Lagoon, Oahu and Barbers Point Harbor, Oahu, would be subject to enforcement only upon the occurrence of one of the following events:

1. Whenever the Maritime Security (MARSEC) level, as defined in 33 CFR part 101, is raised to 2 or higher; or,

2. Whenever the Captain of the Port, after considering all available facts, determines that there is a heightened risk of a transportation security incident or other serious maritime incident, including but not limited to any incident that may cause loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

For the security zones at Kalihi Channel and Keehi Lagoon, Oahu and Barbers Point Harbor, Oahu, the Captain of the Port would cause notice of either of these two enforcement-triggering events to be published in the **Federal Register**. The Captain of the Port would use actual notice, local notice to mariners, and broadcast notice to mariners to advise the public when these security zones are subject to enforcement. By the same means, the Captain of the Port would also cause notice of suspension of enforcement of these security zones to be made.

The Captain of the Port would also use local notice to mariners and broadcast notice to mariners to announce the enforcement of security zones around vessels more than 300 gross tons anchored in Honolulu Harbor Anchorages B, C or D. Notice of enforcement of an LCS security zone adjacent to the islands of Maui, Kauai or Hawaii would be provided by the presence of the LCS itself.

Entry into the security zones in this proposed rule while they are subject to enforcement would be prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu, Hawaii. The Captain of the Port or his or her representatives would enforce these security zones. The Captain of the Port may be assisted by other federal or state agencies to the extent permitted by law.

For all seaplane traffic entering or transiting the security zones, a seaplane's compliance with all Federal Aviation Administration (FAA) regulations regarding flight-plan approval would be deemed adequate permission to transit the waterway security zones described in this section. No communication between the aircraft and the Coast Guard would be necessary upon compliance with FAA regulations regarding the flight plan.

These security zones would be established pursuant to the authority of the Magnuson Act, 50 U.S.C. 191, *et seq.*, and regulations promulgated by the President under Title 33, Part 6 of the Code of Federal Regulations. Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

In addition to revising security zones, this proposed rule also would remove an existing security zone located at General Anchorage A, current 33 CFR 165.1407(a)(1), in the vicinity of Honolulu Harbor and entrance channel.

### **Regulatory Evaluation**

This proposed 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.

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the short duration of most of the zones and the limited geographic area affected by them.

### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule will 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 will not have a significant economic impact on a substantial number of small entities. While we are aware that many affected areas have small commercial entities, including canoe and boating clubs and small commercial businesses that provide recreational services, we anticipate that there will be little or no impact to these small entities due to the narrowly tailored scope of these proposed security zones.

### **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 Lieutenant (Junior Grade) Quincey Adams, U.S. Coast Guard Sector Honolulu, at (808) 842–2600. 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 proposed 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 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 or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### **Taking of Private Property**

This proposed rule will 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 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 proposed 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 proposed 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 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 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, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation.

### List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

For the reasons set out 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. 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. Revise § 165.1407 to read as follows:

#### § 165.1407 Security Zones; Oahu, HI.

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section. All coordinates below are expressed in degrees, minutes, and tenths or hundredths of minutes.

(1) *Honolulu Harbor.* All waters of Honolulu Harbor and Honolulu entrance channel commencing at a line between entrance channel buoys no. 1 and no. 2, to a line between the fixed day beacons no. 14 and no. 15 west of Sand Island Bridge.

(2) *Honolulu Harbor Anchorages B, C, and D.* All waters extending 100 yards in all directions from each vessel in excess of 300 gross tons anchored in Honolulu Harbor Anchorage B, C, or D, as defined in 33 CFR 110.235(a).

(3) *Kalihi Channel and Keehi Lagoon, Oahu.* All waters of Kalihi Channel and Keehi Lagoon beginning at Kalihi Channel entrance buoy no. 1 and continuing along the general trend of Kalihi Channel to day beacon no. 13, thence continuing on a bearing of 332.5°T to shore, thence east and south along the general trend of the shoreline to day beacon no. 15, thence southeast to day beacon no. 14, thence southeast along the general trend of the shoreline of Sand Island, to the southwest tip of Sand Island at 21°18.0' N/157°53.05' W, thence southwest on a bearing of 233°T to Kalihi Channel entrance buoy no. 1.

(4) *Honolulu International Airport.* (i) *Honolulu International Airport, North Section.* All waters surrounding Honolulu International Airport from 21°18.25' N/157°55.58' W, thence south to 21°18.0' N/157°55.58' W, thence east to the western edge of Kalihi Channel, thence north along the western edge of the channel to day beacon no. 13, thence northwest at a bearing of 332.5°T to shore.

(ii) *Honolulu International Airport, South Section.* All waters near Honolulu

International Airport from 21°18.0' N/157°55.58' W, thence south to 21°16.5' N/157°55.58' W, thence east to 21°16.5' N/157°54.0' W (the extension of the western edge of Kalihi Channel), thence north along the western edge of the channel to 21°18.0' N/157°53.92' W (Kalihi Channel buoy "5"), thence west to 21°18.0' N/157°55.58' W.

(5) *Barbers Point Offshore Moorings.* All waters around the Tesoro Single Point and the Chevron Conventional Buoy Moorings beginning at 21°16.43' N/158°06.03' W, thence northeast to 21°17.35' N/158°3.95' W, thence southeast to 21°16.47' N/158°03.5' W, thence southwest to 21°15.53' N/158°05.56' W, thence north to the beginning point.

(6) *Barbers Point Harbor, Oahu.* All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°19.5' N/158°07.26' W.

(b) *Definitions.* As used in this section, *MARSEC Level 2 or Maritime Security Level 2* means, as defined in 33 CFR 101.105, the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a transportation security incident.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones described in this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives.

(2) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at Command Center telephone number (808) 842–2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842–2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, a seaplane's compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement and suspension of enforcement of certain security zones.*

(1) The security zones in paragraphs (a)(3) (Kalihi Channel and Keehi Lagoon, Oahu), (a)(4)(ii) (Honolulu International Airport, South Section), and (a)(6) (Barbers Point Harbor, Oahu)

of this section will be enforced only upon the occurrence of one of the following events—

(i) Whenever the Maritime Security (MARSEC) level, as defined in 33 CFR part 101, is raised to 2 or higher; or

(ii) Whenever the Captain of the Port, after considering all available facts, determines that there is a heightened risk of a transportation security incident or other serious maritime incident, including but not limited to any incident that may cause a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

(2) A notice will be published in the **Federal Register** reporting when events in paragraph (d)(1)(i) or (d)(1)(ii) of this section have occurred.

(3) The Captain of the Port of Honolulu will cause notice of the enforcement of the security zones listed in paragraph (d)(1) of this section and notice of suspension of enforcement to be made by appropriate means to affect the widest publicity, including the use of broadcast notice to mariners and publication in the local notice to mariners.

(e) *Informational notices.* The Captain of the Port will cause notice of the presence of security zones created by paragraph (a)(2) of this section, Honolulu Harbor Anchorages B, C, and D, to be made by appropriate means to affect the widest publicity, including the use of broadcast notice to mariners and publication in the local notice to mariners.

(f) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(g) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(h) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

3. Add § 165.1408 to read as follows:

**§ 165.1408 Security Zones; Maui, HI.**

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section:

(1) *Kahului Harbor, Maui.* All waters extending 100 yards in all directions

from each large cruise ship in Kahului Harbor, Maui, HI or within 3 nautical miles seaward of the Kahului Harbor COLREGS DEMARCATION (See 33 CFR 80.1460). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(2) *Lahaina, Maui.* All waters extending 100 yards in all directions from each large cruise ship in Lahaina, Maui, whenever the LCS is within 3 nautical miles of Lahaina Light (LLNR 28460). The security zone around each LCS is activated and enforced whether the cruise ship is underway, moored, position-keeping, or anchored, and will continue in effect until such time as the LCS departs Lahaina and the 3-mile enforcement area.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones in this section may contact the Captain of the Port at Command Center telephone number (808) 842-2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842-2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration

regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

4. Add § 165.1409 to read as follows:

**§ 165.1409 Security Zones; Hawaii, HI.**

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section:

(1) *Hilo Harbor, Hawaii.* All waters extending 100 yards in all directions from each large cruise ship in Hilo Harbor, Hawaii, HI or within 3 nautical miles seaward of the Hilo Harbor COLREGS DEMARCATION (See 33 CFR 80.1480). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(2) *Kailua-Kona, Hawaii.* All waters extending 100 yards in all directions from each large cruise ship in Kailua-Kona, Hawaii, whenever the LCS is within 3 nautical miles of Kukailimoku Point. The 100-yard security zone around each LCS is activated and enforced whether the LCS is underway, moored, position-keeping, or anchored and will continue in effect until such time as the LCS departs Kailua-Kona and the 3-mile enforcement area.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed

within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones in this section may contact the Captain of the Port at Command Center telephone number (808) 842-2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842-2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

5. Add § 165.1410 to read as follows:

**§ 165.1410 Security Zones; Kauai, HI.**

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section:

(1) *Nawiliwili Harbor, Lihue, Kauai.* All waters extending 100 yards in all directions from each large cruise ship in Nawiliwili Harbor, Kauai, HI or within 3 nautical miles seaward of the Nawiliwili Harbor COLREGS DEMARCATION (See 33 CFR 80.1450).

This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(2) *Port Allen, Kauai.* All waters extending 100 yards in all directions from each large cruise ship in Port Allen, Kauai, HI or within 3 nautical miles seaward of the Port Allen COLREGS DEMARCATION (See 33 CFR 80.1440). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at Command Center telephone number (808) 842-2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842-2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port

representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: May 23, 2005.

**C.D. Wurster,**

*Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.*

[FR Doc. 05-11168 Filed 6-6-05; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### 42 CFR Part 50

#### RIN 0906-AA69

#### Simplification of the Grant Appeals Process

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to 42 CFR part 50, subpart D, the Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS), has provided an informal level of appeal on those grant related disputes subject to the departmental appeal procedures codified at 45 CFR Part 16. HHS is proposing to amend 42 CFR part 50, subpart D, to remove HRSA from the list of agencies to which these informal appeal procedures apply. This would permit aggrieved HRSA grantees direct access to the Departmental Grant Appeals Board and that Board's original jurisdiction.

**DATES:** Written comments must be received on or before August 8, 2005.

**ADDRESSES:** You may submit comments, identified by RIN number 0906-AA69, by any of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. Submit written comments by mail to the attention of Gail Lipton, Director, Division of Grants Policy, Room 11A-55, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.