

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02-019]

RIN 2115-AA97

Security Zones; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established moving and fixed security zones extending 100 yards around and under all cruise ships and tank vessels that enter, are moored in, anchored in, or depart from the San Francisco Bay, California and Delta ports. These security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port San Francisco Bay.

DATES: This final rule is effective December 21, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Francisco Bay, Waterways Management Branch, 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 Diana Cranston, Chief, Waterways Management Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, 510-437-3073.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On October 30, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; San Francisco Bay, California" in the **Federal Register** (67 FR 66086). We received no letters on the proposed rule. No public hearing was requested, and none was held.

On December 21, 2001, we issued a rule under COTP San Francisco Bay 01-012, and published that rule in the **Federal Register** (67 FR 7611, February 20, 2002) creating temporary section 165.T11-098 of Title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11-098, which expired at 11:59 p.m. PDT on June 21, 2002, the Coast Guard established 100-yard security zones around all cruise ships and tank vessels that entered, were moored in, or departed from the San Francisco Bay and Delta ports.

On June 12, 2002, a change in effective period temporary rule was issued, under docket COTP San Francisco Bay 02-012 and was published in the **Federal Register** (67 FR 42486, June 24, 2002), under the same previous temporary section 165.T11-098, which is set to expire at 11:59 p.m. on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exits. Accordingly, this final rule creates a permanent regulation for security zones in the same locations covered by the temporary final rule published on February 20, 2002 (67 FR 7611) which was later extended by another rule published in the **Federal Register** on June 24, 2002 (67 FR 42486).

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** because the threat of maritime attacks is real as evidenced by the attack of a tanker vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such disturbances continue to endanger the international relations of the U.S. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. Controlled Vessels and other Maritime Interests*, detailing the current threat of attack, MARAD 02-07 (October 10, 2002). The current temporary rule is set to expire December 21, 2002, and any delay in the effective date of this final rule is impractical and contrary to the public interest.

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 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.

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 cruise ship and/or tank vessel would have on the public interest, the Coast Guard is establishing permanent security zones around and under cruise ships and tank vessels entering, departing, or moored or anchored within the San Francisco Bay and Delta ports. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against cruise ships and tank vessels. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a cruise ship and/or tank vessel would have on the multiple passengers on board and surrounding area and communities, security zones are prudent for these types of vessels.

Discussion of Comments and Changes

We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. Therefore, we have made no changes and will implement the provisions of the proposed rule as written.

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).

Although this regulation restricts access to the zones, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative; and (iv) vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships and laden tank vessels, their crews and passengers, other vessels operating in the vicinity of the cruise ships and laden taken ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship and/or a tank ship in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during cruise ship and tank ship transits, which will last for approximately 30 minutes.

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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the 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 Agricultural 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 would 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this 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.ID, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A “Categorical Exclusion Determination” is 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. 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.

2. Add § 165.1183 to read as follows:

§ 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.

[FR Doc. 02-33018 Filed 12-30-02; 8:45 am]

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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