

**Authority:** 21 U.S.C. 321, 331, 361, 362, 371, 374.

### § 720.8 [Amended]

■ 30. Section 720.8 *Confidentiality of statements* is amended by removing from the second sentence of paragraph (a) the phrase “and in § 20.44 of this chapter”.

Dated: May 3, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–11647 Filed 5–9–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Diego 03–010]

RIN 1625–AA00 [Formerly RIN 2115–AA97]

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is expanding the geographical boundaries of the permanent security zones at Naval Base San Diego; Naval Submarine Base, San Diego; and Naval Base Coronado, California at the request of the U.S. Navy. Modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored within each zone by accommodating the Navy’s placement of anti-small boat barrier booms within the zones. Entry into these zones is prohibited unless authorized by the Captain of the Port (COTP) San Diego; Commander, Naval Base San Diego; Commander, Naval Base Point Loma; Commander, Naval Base Coronado; or Commander, Navy Region Southwest.

**DATES:** The suspension of 33 CFR 165.1101, 165.1103, and 165.1104 (effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 12, 2003, published in the **Federal Register** at 68 FR 7073–7080, on February 12, 2003) is lifted effective 11:59 p.m. on April 14, 2003. This rule is effective on April 15, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–010] and are available for inspection or copying at Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101. Marine Safety Office San Diego, Port Operations

Department between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Joseph Brown, Port Safety and Security, at (619) 683–6495.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

On February 11, 2003, we published a notice of proposed rulemaking (NPRM) entitled [Security Zones; San Diego Bay, CA] in the **Federal Register** (68 FR 6844). We received 0 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Maritime Administration (MARAD) recently issued MARAD Advisory 03–03 (182100Z MAR 03) informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the maritime community in the United States. Further, national security and intelligence officials warn that future terrorist attacks against United States interests are likely. The measures contemplated by the rule are intended to prevent waterborne acts of sabotage or terrorism, which terrorists have demonstrated a capability to carry out. Any delay in making this regulation effective would be contrary to the public interest because immediate action is necessary to protect U.S. naval interests against the possible loss of life, injury, or damage to property.

##### **Background and Purpose**

On September 16th and 17th, 2002, the Coast Guard published three temporary final rules suspending 33 CFR 165.1101, 33 CFR 165.1103, and 33 CFR 165.1104 and implementing temporary security zones at Naval Base San Diego, Naval Base Coronado, and Naval Submarine Base San Diego. See 67 FR 58524, 67 FR 58526, and 67 FR 58333. Modified versions of these zones have been in place since 1998 and the Coast Guard has not received any comments during that time and no negative incidents have been reported.

The U.S. Navy requested that the Coast Guard implement these security zones in coordination with their installation of anti-small boat barrier booms at the three locations. If you would like to obtain information about the U.S. Navy’s action, contact the Assistant Chief of Port Operations, Navy Region Southwest at 619–556–2400.

The Coast Guard is modifying the security zones to allow the U.S. Navy to

put anti-small boat barrier booms at Naval Base San Diego (33 CFR 165.1101); Naval Submarine Base, San Diego (33 CFR 165.1103); and Naval Base Coronado (33 CFR 165.1104). The modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The Coast Guard’s action supports the Navy’s action and is limited to the expansion of the existing zones.

The modification and expansion of these security zones will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base Coronado, Naval Submarine Base San Diego, and Naval Base San Diego, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. It will also safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; Commander, Naval Base Point Loma; Commander, Naval Base Coronado; or Commander, Navy Region Southwest.

##### **Discussion of Rule**

Specifically, the Coast Guard is expanding the security zone boundaries at the request of the U.S. Navy so that the U.S. Navy can install anti-small boat barrier booms.

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 issued 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

These rules are not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and do 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 them under that Order. They are not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to National Security interests, the implementation of these security zones is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether these rules 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 these rules would not have a significant economic impact on a substantial number of small entities because the expanded zones will still allow sufficient room for vessels to transit the channel unimpeded.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that these rules would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree these rules would economically affect it.

#### 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 these rules so that they can better evaluate its effects on them and participate in the rulemakings. If the rules would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Joseph Brown, Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule 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 these rules and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1D, these rules are categorically excluded from further environmental documentation because our action is limited to the expansion of existing security zones. The U.S. Navy has separately considered the impact of their proposed project including the placement of anti-small boat barrier booms. While we reviewed the Navy's environmental documentation, our analysis pertains solely to the expanded placement of the small markers designating the security zones already in the waterway. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and 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, and 160.5; Department of Homeland Security Delegation No. 0170.

#### § 165.T11-047 [Removed]

■ 2. Remove 165.T11-047.

■ 3. Revise § 165.1101 to read as follows:

#### § 165.1101 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water area within Naval Station, San Diego enclosed by the following points: Beginning at 32°41'16.5" N, 117°08'01" W (Point A); thence running southwestwardly to 32°41'02.5" N, 117°08'08.5" W (Point B); to 32°40'55.0" N, 117°08'00.0" W (Point C); to 32°40'49.5" N, 117°07'55.5" W (Point D); to 32°40'44.6" N, 117°07'49.3" W (Point E); to 32°40'37.8" N, 117°07'43.2" W, (Point F); to 32°40'30.9"

N, 117°07'39.0" W (Point G); 32°40'24.5" N, 117°07'35.0" W (Point H); to 32°40'17.2" N, 117°07'30.8" W (Point I); to 32°40'10.6" N, 117°07'30.5" W (Point J); to 32°39'59.0" N, 117°07'29.0" W (Point K); to 32°39'49.8" N, 117°07'27.2" W (Point L); to 32°39'43.0" N, 117°07'25.5" W (Point M); 32°39'36.5" N, 117°07'24.2" W, (Point N); thence running easterly to 32°39'38.5" N, 117°07'06.5" W (Point O); thence running generally northwesterly along the shoreline of the Naval Station to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619-683-6495 or on VHF 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.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U. S. Navy.

#### § 165.T11-031 [Removed]

■ 4. Remove § 165.T11-031.

■ 5. Revise § 165.1103 to read as follows:

#### § 165.1103 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water adjacent to the Naval Submarine Base, San Diego, commencing on a point on the shoreline of Ballast Point, at 32° 41'11.2" N, 117° 13'57.0" W (Point A), thence northerly to 32° 41'31.8" N, 117° 14'00.6" W (Point B), thence westerly to 32° 41'32.7" N, 117° 14'03.2" W (Point C), thence southwestwardly to 32° 41'30.5" N, 117° 14'17.5" W (Point D), thence generally southeasterly along the shoreline of the Naval Submarine Base to the point of beginning, (Point A). All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base Point Loma; or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619-683-6495 or on VHF 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.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

#### § 165.T11-049 [Removed]

■ 6. Remove § 165.T11-049.

■ 7. Revise 165.1104 to read as follows:

#### § 165.1104 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Base Coronado, the area enclosed by the following points: Beginning at 32°42'53.0" N, 117°11'45.0" W (Point A); thence running northerly to 32°42'55.5" N, 117°11'45.0" W, (Point B); thence running easterly to 32°42'57.0" N, 117°11'31.0" W, (Point C); thence southeasterly to 32°42'42.0" N, 117°11'04.0" W (Point D); thence southeasterly to 32°42'21.0" N, 117°10'47.0" W (Point E) thence running southerly to 32°42'13.0" N, 117°10'51.0" W (Point F); thence running generally northwesterly along the shoreline of Naval Base Coronado to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in Sec. 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base Coronado, or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619-683-6495 or on VHF 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.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: April 15, 2003.

**Stephen P. Metruck,**

*Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.*

[FR Doc. 03-11166 Filed 5-9-03; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[MS-200326a; FRL-7497-3]

#### Approval and Promulgation of State Plan for Designated Facilities and Pollutants: MS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving the sections 111(d)/129 plan submitted by the Mississippi Department of Environmental Quality (MDEQ) for the State of Mississippi on August 29, 2002, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) Units that Commenced Construction On or Before November 30, 1999.

**DATES:** This direct final rule is effective July 11, 2003, unless EPA receives adverse comments by June 11, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Monitoring Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104. Copies of materials submitted to EPA may be examined during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Joydeb Majumder at (404) 562-9121 or Heidi LeSane at (404) 562-9035.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate

matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by MDEQ for the State of Mississippi to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

##### II. Discussion

MDEQ submitted to EPA on August 29, 2002, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in the State of Mississippi: Public Participation-Demonstration that the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public Hearing; Emissions Standards and Compliance Schedules; Emission Inventories, Source Surveillance, and Reports; and Legal Authority.

The approval of the Mississippi State Plan is based on finding that: (1) MDEQ provided adequate public notice of public hearings for the EG for CISWIs, and (2) MDEQ also demonstrated legal authority to adopt emission standards and compliance schedules to designated facilities; authority to enforce applicable laws, regulations, standards, and compliance schedules, and authority to seek injunctive relief; authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require record keeping and to make inspections and conduct tests of designated facilities; and authority to require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State

on the nature and amount of emissions from such facilities.

MDEQ cites the following references for the legal authority: The Mississippi Statutes § 49-2-4. Department of Environmental Quality; executive director; qualification, § 49-2-5. Commission on Environmental Quality, § 49-2-13. Powers and duties of executive director, § 49-17-17. Powers and duties, § 49-17-43 Penalties, and § 49-17-21. Inspections and investigations; access to and maintenance of records; testing and sampling; and monitoring equipment.

An enforcement mechanism is a legal instrument by which the MDEQ can enforce a set of standards and conditions. The MDEQ has adopted 40 CFR 60, Subpart DDDD, into Section 13, APC-S-1, of the Mississippi Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants. Therefore, MDEQ's mechanism for enforcing the standards and conditions of 40 CFR 60, subpart DDDD, is Rule APC-S-1, Section 13. On the basis of these statutes and rules of the State of Mississippi, the State Plan is approved as being at least as protective as the Federal requirements for existing CISWI units.

MDEQ adopted all emission standards and limitations applicable to existing CISWI units. These standards and limitation have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

MDEQ submitted the compliance schedule for CISWIs under their jurisdiction in the State of Mississippi. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

MDEQ submitted an emissions inventory of all designated pollutants for CISWI units under their jurisdiction in the State of Mississippi. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

MDEQ includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in Appendix D of the State Plan. In Appendix D, MDEQ also submits its legal authority to provide for periodic inspection and testing and provisions for making reports of CISWI emissions data, correlated with emission standards that apply, available to the general public.