

section applies to any advance refunding issue issued after May 28, 1991.

(3) *Special effective date for paragraph (f)(3)*. Paragraph (f)(3) of this section applies to bonds sold on or after July 8, 1997 and to any issue to which the election described in § 1.148–11(b)(1) is made. See § 1.148–11A(i) for rules relating to certain bonds sold before July 8, 1997.

(4) *Special effective date for paragraph (g)*. See § 1.141–15 for the applicability date of paragraph (g) of this section.

■ **Par 9.** Section 1.150–1 is amended by revising paragraphs (a)(3) and (c)(3)(ii) to read as follows:

**§ 1.150–1 Definitions.**

(a) \* \* \*

(3) *Exceptions to general effective date.* See § 1.141–15 for the applicability date of the definition of bond documents contained in paragraph (b) of this section and the effective date of paragraph (c)(3)(ii) of this section.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) *Exceptions.* This paragraph (c)(3) does not apply for purposes of sections 141, 144(a), 148, 149(d) and 149(g).

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 23, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 05–23944 Filed 12–16–05; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD14–04–116]

RIN 1625–AA87

**Security Zones; Oahu, Maui, Hawaii, and Kauai, HI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing 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 are continuously activated and enforced at all times, while others are activated and enforced only during heightened threat conditions. Entry into these Coast Guard security zones while they are activated and enforced is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective January 18, 2006.

**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 CGD14–04–116 and are available for inspection or 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:**

**Regulatory Information**

On May 20, 2004, we 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. On June 7, 2005, we published a supplemental NPRM (SNPRM) entitled “Security Zones; Oahu, Maui, HI, and Kauai, HI,” in the *Federal Register* (70 FR 33047). We received one letter and one phone call commenting on the SNPRM. No public meeting was requested, and none was held.

**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: national emergency with respect to terrorist attacks, 70 FR 54229, September 13, 2005; and national emergency with respect to persons who

commit, threaten to commit, or support acts of terrorism, 70 FR 55703, September 22, 2005. 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. 13273, 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). 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 continuing most of the current security zones but is reducing the size and scope of some to afford acceptable protection to critical assets and maritime infrastructure and minimize the disruption to maritime commerce and inconvenience to small entities.

This rule establishes permanently-existing security zones in the waters surrounding the islands of Oahu, Maui, Kauai, and Hawaii. Specifically, 13 permanent security zones 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 raised issues that are discussed below.

A letter from a Hawaii-based oil company is in favor of the 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 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 rule does not preclude the submission of an accurate operating schedule as a means of obtaining permission to enter the security zones established 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 is at the discretion of the Captain of the Port.

The final letter commenting on the security-zone changes is from a maritime association and raises three separate issues:

*Issue 1:* The letter comments that, because Maui, Hawaii, and Kauai, each contain port facilities 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 large crew ship (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:* These security zones do not preclude simultaneous use of a harbor when an LCS is moored at one of the facilities. We acknowledge

that the security zones around large cruise ships occasionally may cause inconvenience to other vessels and operators within the immediate area because they will 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 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 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 regulation paragraphs on LCS zones for the islands of Maui, Kauai, and Hawaii, because the LCS zones are for those islands only; none are for Oahu. This change also allows us to focus the regulation and notice paragraphs in the Oahu CFR section on the three Oahu zones (Kalihi Channel and Keehi Lagoon; Honolulu International Airport, South Section; and Barbers Point Harbor) 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 are enforced. It is important to note, however, that these security zones are 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 the SNPRM that did not change the meaning or intent of our initial proposed rule but were intended to improve the clarity of the 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 the rule). The commenter noted that this area is planned for future ocean recreation expansion and it should not be continuously and permanently removed from public use, and the 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 that 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, need only to seek and obtain prior approval. The Captain of the Port will 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 rule to the extent described above, but we also made additional substantive changes from the proposed rule published on May 20, 2004 (69 FR 29114) that necessitated the SNPRM. We proposed an additional security zone, described in this rule, § 165.1407(a)(4)(ii), as *Honolulu International Airport, South Section*. This zone, encompassing Honolulu Harbor anchorages B, C, and D, is a Category 2 zone, subject to enforcement only in times of raised MARSEC levels or other threats. We determined there is a need to add this zone to establish an extra protective buffer around the airport when necessary.

The separately-designated *Honolulu Harbor Anchorages B, C, and D* security zone remains 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 is still 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 for increased airport protection.

The name of the *Honolulu International Airport* security zone in our initial proposed rule is changed to *Honolulu International Airport, North Section*, § 165.1407(a)(4)(i), to distinguish it from the *Honolulu International Airport, South Section* security zone. The *Honolulu International Airport, North Section* security zone remains 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 eliminated 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 is 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 rule.

Additionally, in the paragraphs of our rule that address permission to transit a security zone, we have 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 otherwise have to make when transiting the zones. For the convenience of the reader, we included a cross reference to the relevant FAA regulations in the regulation text.

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 eliminates the need to amend those paragraphs every time the penalty statutes are amended.

Other corrections of 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.

In response to our SNPRM published on June 7, 2005, the Coast Guard received one phone call and one letter. The phone call from the National Oceanic and Atmospheric Administration highlighted an inconsistency within our description of the *Honolulu International Airport, South Section* security zone, § 165.1407(a)(4)(ii). The description erroneously suggested that Kalihi Channel buoy “5” is located at 21°18.0’ N/157°53.92’ W. To avoid any potential misunderstanding, we deleted those coordinates from the description in the final rule, leaving the buoy itself as the pertinent reference point.

The letter commenting on our SNPRM is from a maritime association and raises several issues, including calls for more specific language in various parts of our *Discussion of Proposed Rule* section. We drafted that section, however, solely for our SNPRM to help the public understand the proposal and formulate comments. As the regulatory text makes clear, all LCS security zones are activated at least 3 nautical miles seaward of the six harbors that have LCS security zones: Kahului Harbor, Maui; Lahaina, Maui; Hilo Harbor, Hawaii; Kailua-Kona, Hawaii; Nawiliwili Harbor, Lihue, Kauai; and Port Allen, Kauai. The letter raised four other issues, addressed as follows:

*Issue 1:* The letter comments that the SNPRM did not include Sector Honolulu’s toll-free telephone number for requesting permission to enter a zone. It recommends that we include the number in our final rule for the use of mariners transiting the other Hawaiian islands’ zones.

*Coast Guard Response:* We understand that a toll-free line for requesting permission to enter a zone would ease the burden on mariners calling from the affected islands. The Sector’s toll-free number, however, is a direct line to the Search and Rescue Controller, who must not be distracted by routine transit requests. We have determined that the use of the contact information provided in the SNPRM is not excessively burdensome, especially considering the abundance of options, including phone, fax, radio, and mail.

*Issue 2:* The ports at Hilo, Kahului, and Nawiliwili are large enough to completely accommodate LCSs, so there is no need for the LCSs to anchor seaward of those harbors. Therefore, the enforcement areas 3 nautical miles

seaward of those harbors should be deleted.

*Coast Guard Response:* We have considered deleting the seaward enforcement areas for those harbors, but we determined that they must remain because they enable the Coast Guard to bolster an LCS’s security before it reaches the harbor. This provision allows security personnel to identify and respond to potential threats before the harbor itself is threatened by the arrival of an unsecured LCS. Additionally, depending on the status of harbor traffic at the time or the intentions of LCS masters, it is conceivable that vulnerable LCSs will anchor within the enforcement areas seaward of those harbors.

*Issue 3:* In paragraph (c)(1) of §§ 165.1408, 165.1409, and 165.1410 of this rule, the last sentence (“No person is allowed within 100 yards \* \* \*”) should specify that that restriction applies to LCSs within designated geographic locations.

*Coast Guard Response:* We agree and have inserted the phrase “in any of the areas described by paragraph (a) of this section” into that last sentence of paragraph (c)(1) in each of those three sections to clarify the restriction.

*Issue 4:* The SNPRM’s proposed § 165.1407(a) fails to specify paragraph (d) as a provision affecting enforcement of the zones.

*Coast Guard Response:* We agree and have revised paragraph (a) of that section to include a reference to paragraph (d).

We changed from our proposed regulatory text to the extent described above. Our final rule otherwise remains the same as that published in our SNPRM.

## 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 Homeland Security (DHS).

The Coast Guard expects the economic impact of this 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 activation duration of most of the zones and the limited geographic area affected by them. We considered our changes to the regulatory text resulting from our

NPRM and SNPRM and determined that they do not alter our expectation.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 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 expect that there will be little or no impact to these small entities due to the narrowly tailored scope of these security zones. We considered our changes to the regulatory text resulting from our NPRM and SNPRM and determined that they do not change the information upon which we based our original assessment of impact on small entities.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could 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 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

either preempts State law or imposes a substantial direct cost of compliance on them. We have analyzed this rule under that Order, including our changes to the regulatory text resulting from our NPRM and SNPRM, 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 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 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. 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 is 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this 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 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 rule is categorically excluded from further environmental documentation.

### List of Subjects 33 CFR Part 165

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

■ For the reasons set out 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. 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 of paragraphs (c) and (d). 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 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 (14 CFR parts 91 and 99) 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) 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 the security zones established in 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):

(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 established 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 in any of the areas described by paragraph (a) of this section 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 (14 CFR parts 91 and 99) 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):

(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 established 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 in any of the areas described by paragraph (a) of this section 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 (14 CFR parts 91 and 99) 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):

(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 established 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 in any of the areas described by paragraph (a) of this section 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 (14 CFR parts 91 and 99) 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: December 8, 2005.

**C.D. Wurster,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[FRL-8009-3]

#### NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on amendments to the national emissions standards for hazardous air pollutants (NESHAP) for hazardous waste combustors which were issued October 12, 2005, under section 112 of the Clean Air Act. In that rule, we inadvertently included three new or revised bag leak detection system requirements for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—among implementation requirements taking effect on December 12, 2005, rather than, as intended, after three years when the sources begin complying with the revised emission standards under the NESHAP for hazardous waste combustors. We intended to establish the compliance date for these provisions three years after promulgation—October 14, 2008—because the provisions establish more stringent requirements for Phase I sources, which cannot readily be complied with on short notice, and because these provisions are inextricably tied to the revised emissions standards. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

**DATES:** This direct final rule will be effective on February 17, 2006 without further notice, unless EPA receives adverse written comment by January 18,

2006, or by February 2, 2006 if a public hearing is requested. If adverse comments are received, EPA will publish a timely withdrawal notice in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2004-0022, by one of the following methods:

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

- Email: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov) and [behan.frank@epa.gov](mailto:behan.frank@epa.gov).

- Fax: 202-566-1741.

- Mail: U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

- Hand Delivery: In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0022. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured