

for 8 hours from 6 a.m. to 2 p.m. July 16 and July 23, 2005. At 2 p.m. the bridge will open for vessels, and will remain open until all waiting and arriving vessels have transited the bridge. Otherwise, during the enforcement period the drawspan will be closed to navigation for 4-hour periods after which time it will open for navigation if vessels are present. The bridge will continue to operate with an opening after each 4-hour closure until regular operations are resumed at 6 a.m., July 18 and July 25, 2005, respectively. There are no alternate routes for vessels transiting through mile 383.9 on the Upper Mississippi River.

The Fort Madison Drawbridge provides a vertical clearance of 13.1 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operations as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 29, 2005.

Roger K. Wiebusch,
Bridge Administrator.

[FR Doc. 05-7208 Filed 4-8-05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 05-004]

RIN 1625-AA87

Security Zones; Monterey Bay and Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones extending 100 yards in the U.S. navigable waters around and under all cruise ships, tank vessels, and High Interest Vessels (HIVs) that enter, are moored in, anchored in, or depart from the designated waters of Monterey Bay or Humboldt Bay, California. These security zones are needed for national security reasons to protect the public and ports of Monterey Bay and Humboldt Bay from potential subversive acts. Entry into these security zones is

prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: This rule is effective from 4 p.m. on March 23, 2005 to 12:01 a.m. on May 11, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 05-004] and are available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-2770.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because the threat of a terrorist attack against cruise ships, tank vessels, and HIVs currently exists and is ongoing.

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**. The measures contemplated by this rule are intended to prevent terrorist attacks against individuals and facilities within or adjacent to cruise ships, tank vessels, and HIVs located in Monterey Bay and Humboldt Bay. Any delay in the effective date of this TFR would be contrary to the public interest and would unnecessarily expose cruise ships, tank vessels, and HIVs to potential terrorist attacks.

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 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, tank vessel, or HIV would have on the public interest, the Coast Guard is establishing security zones around and under cruise ships, tank vessels, and HIVs entering, departing, moored or anchored within designated waters of Monterey Bay and Humboldt Bay, California. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these types of vessels. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a cruise ship, tank vessel, or HIV would have on the crew and passengers on board, and the surrounding area and communities, security zones are prudent for these types of vessels.

Discussion of Rule

On December 31, 2002, we published the final rule [COTP San Francisco Bay 02-019] adding § 165.1183, "Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California" in the **Federal Register** (67 FR 79854). That section set forth security zones for cruise ships and tank vessels in San Francisco Bay and delta ports. A subsequent final rule [COTP San Francisco Bay 03-002] published in the **Federal Register** (69 FR 8817) on February 26, 2004, amended section 165.1183 to include HIVs as protected vessels in that section, along with cruise ships and tank vessels. Neither of these final rules addressed security zones around cruise ships, tank vessels, or HIVs located in Monterey Bay or Humboldt Bay, California.

In addition, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (69 FR 56011) on September 17, 2004, that proposed to make permanent these temporary security zones around cruise ships, tank

vessels, and HIVs in Monterey Bay and Humboldt Bay. In the NPRM, we proposed to amend 33 CFR 165.1183, "Security Zones; Cruise Ships, Tank Vessels, and High Interest Vessels, San Francisco Bay and Delta ports, California", to include security zones around cruise ships, tank vessels, and HIVs when they are located in Monterey Bay and Humboldt Bay, California. The final rule that will effect this change is published elsewhere in today's **Federal Register**, but will not go into effect until 12:01 on May 11, 2005. This temporary rule will provide the desired level of security for these vessels in Monterey Bay and Humboldt Bay until the final rule goes into effect.

Temporary final rules similar to this one have been used in the past to establish security zones around all cruise ships, tank vessels, and HIVs that are anchored, moored, or underway within designated waters of Monterey Bay and Humboldt Bay, California. The first TFR was published in the **Federal Register** (69 FR 16163) on March 29, 2004. The second TFR was published in the **Federal Register** (69 FR 55502) on September 15, 2004.

For Monterey Bay, a security zone is activated when any cruise ship, tank vessel, or HIV passes shoreward of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10' N, 122°01.60' W, and Cypress Point, Monterey to the south, in position 36°34.90' N, 121°58.70' W.

For Humboldt Bay, a security zone is activated when any cruise ship, tank vessel, or HIV enters an area within a 4 nautical mile radius line drawn west of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130), in position 40°46.25' N, 124°16.13' W, or enters waters within the Humboldt Bay Harbor.

The security zone remains in effect while the cruise ship, tank vessel, or HIV is underway, anchored or moored within the designated waters of Monterey Bay or Humboldt Bay. When activated, the security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of the vessel. This security zone is automatically deactivated when the vessel departs from the areas of Monterey Bay or Humboldt Bay designated in this rule. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port, or his designated representative.

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 a security zone described herein, is punishable by civil penalties (not to exceed \$32,500 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.

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).

Although this regulation restricts access to a portion of navigable waters, the effect of this regulation will not be significant because: (i) The zones encompass only a small portion of the waterway; (ii) vessels are able to pass safely around the zones; and (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.

The size of the zones is the minimum necessary to provide adequate protection for all cruise ships, tank vessels, and HIVs, other vessels operating in the vicinity of these vessels, adjoining areas, and the public. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

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.

We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by these security zones. These security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic will be able to pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-2770.

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 or would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This 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.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where located 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. 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. Add § 165.T11–020, to read as follows:

§ 165.T11–020 Security Zones; Monterey Bay and Humboldt Bay, California.

(a) *Definitions*. As used in this section—

Cruise ship 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 ports of Monterey or Humboldt Bay.

High Interest Vessel or *HIV* means any vessel deemed by the Captain of the Port, or higher authority, as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

Tank vessel means any self-propelled tank ship that is constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

(b) *Locations*. The following areas are security zones:

(1) *Monterey Bay*. All waters extending from the surface to the sea floor, within 100 yards of all cruise ships, tank vessels, and HIVs within the waters of Monterey Bay east of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10' N, 122°01.60' W, and Cypress Point, Monterey to the south, in position 36°34.90' N, 121°58.70' W.

(2) *Humboldt Bay*. All waters extending from the surface to the sea floor, within 100 yards of all cruise ships, tank vessels, and HIVs within the waters of Humboldt Bay and the waters within a 4 nautical mile radius of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130), in position 40°46.25' N, 124°16.13' W.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of a security zone may contact the Captain of the Port at telephone number 415-399-3547 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 designated representative.

(3) When a cruise ship, tank vessel, or HIV 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, tank vessel or HIV's security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by local law enforcement as necessary.

(f) *Effective period.* This section becomes effective at 4 p.m. on March 23, 2005, and will terminate at 12:01 a.m. on May 11, 2005.

Dated: March 23, 2005.

Gordon A. Loebel,

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

[FR Doc. 05-7219 Filed 4-8-05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04-003]

RIN 1625-AA87

Security Zones; Monterey Bay and Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent moving and fixed security zones extending 100 yards in the U.S. navigable waters around and under all cruise ships, tankers, and High Interest Vessels (HIVs) that enter, are moored or anchored in, or depart from the designated waters of Monterey Bay or Humboldt Bay, California. These security zones are needed for national security reasons to protect the public and ports of Monterey Bay and Humboldt Bay from potential subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: This rule is effective starting at 12:01 a.m. on May 11, 2005.

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 04-003] and are available for inspection or copying at the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebberts, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 31, 2002, we published a final rule adding § 165.1183, "Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California" in the **Federal Register** (67 FR 79854). That section set forth security zones for cruise ships and tank vessels in San Francisco Bay and delta ports. A subsequent final rule published on February 26, 2004, in the **Federal Register** (69 FR 8817), amended section 165.1183 to include HIVs as protected vessels in that section, along with cruise

ships and tank vessels. Neither of these final rules addressed security zones around cruise ships, tank vessels, or HIVs located in Monterey Bay or Humboldt Bay, California.

In order to establish similar security zones around cruise ships, tank vessels, and HIVs that are anchored, moored or underway in Monterey Bay and Humboldt Bay, California, we published a temporary final rule in the **Federal Register** (69 FR 16163) on March 29, 2004. That temporary final rule was later extended by a second TFR, published in the **Federal Register** (69 FR 55502) on September 15, 2004. Another TFR is being published elsewhere in today's **Federal Register** that provides for the desired level of security for these vessels in Monterey Bay and Humboldt Bay until this final rule goes into effect.

The Captain of the Port has determined that it is in the best interest of homeland security to make these security zones permanent. Accordingly, we published a notice of proposed rule making (NPRM) on September 17, 2004, in the **Federal Register** (69 FR 56011) that proposed to establish security zones around cruise ships, tankers, and high interest vessels in Monterey Bay and Humboldt Bay through a revision to the already existing rule that established security zones around cruise ships, tankers, and high interest vessels in San Francisco Bay (67 FR 79856). In addition, the NPRM proposed updating the definition of "cruise ship" in the existing rule to match the definition in 33 CFR 101.105 and changing the term "tank vessel" to "tanker" so that it would coincide with the definition in 33 CFR 160.3 and better reflect our intention for the rule to apply to self-propelled vessels. We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Penalties for Violating Security Zone

Vessels or persons violating this security zone 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 \$32,500 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