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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 04-002]

RIN 1625-AA00

#### 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 the Pacific Ocean, 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 11:59 p.m. PST on March 5, 2004, to 11:59 p.m. PDT on September 5, 2004.

**ADDRESSES:** Documents indicated in this preamble, as being available in the docket, are part of docket COTP San Francisco Bay 04-002 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:** Ensign John Bannon, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-3073.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because the threat to U.S. assets and the public 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** because the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. Controlled Vessels and Other Maritime Interests, detailing the current threat of attack, MARAD 02-07 (October 10, 2002). As a result, a heightened level of security has been established around all cruise ships, tank vessels, and High Interest Vessels (HIVs) in Monterey Bay and Humboldt Bay, California, and designated waters of the Pacific Ocean adjacent to Humboldt Bay. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to cruise ships, tank vessels, and HIVs located in designated waters of the Pacific Ocean, Monterey Bay or Humboldt Bay. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

In addition to this temporary final rule (TFR), we plan to publish a notice of proposed rulemaking (NPRM) under docket COTP San Francisco Bay 04-003, in which we will propose to make permanent these temporary security zones around cruise ships, tank vessels, and HIVs in Monterey Bay, Humboldt

Bay or designated waters of the Pacific Ocean. In the forthcoming NPRM, we will propose to amend 33 CFR 165.1183, which was added by the final rule [COTP San Francisco Bay 02-019] published in the **Federal Register** (67 FR 79854) on December 31, 2002, and later amended by final rule [COTP San Francisco Bay 03-002] published in the **Federal Register** (69 FR 8817) on February 26, 2004. 33 CFR 165.1183, "Security Zones; Cruise Ships, Tank Vessels, and High Interest Vessels, San Francisco Bay and Delta ports, California", establishes security zones around cruise ships, tank vessels, and HIVs in the San Francisco Bay and Delta ports, but does not address security zones around these vessels when they are located in the designated waters of the Pacific Ocean, Monterey Bay or Humboldt Bay, California. This temporary rule will provide necessary security measures during a notice-and-comment rulemaking for a permanent rule, and section 165.1183 will remain in effect until amended by a future rule.

### 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 the Pacific Ocean, Monterey Bay or 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.

In this temporary rule, the Coast Guard is establishing security zones around all cruise ships, tank vessels, and HIVs that are anchored, moored or underway within designated waters of the Pacific Ocean, Monterey Bay or Humboldt Bay, California.

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 the waters within Humboldt Bay or the waters in the Pacific Ocean 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.

The security zone remains in effect while the cruise ship, tank vessel, or HIV is underway, anchored or moored within the designated waters of the Pacific Ocean, 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 designated areas of the Pacific Ocean, Monterey Bay or Humboldt Bay. 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.

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.

#### 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).

We expect the impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule restricts access to the waters encompassed by the security zones, the effect of this rule is not 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 (Pub. L. 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.

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 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.

#### 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. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" (CED) will be available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 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 temporary § 165.T11-004, to read as follows:

#### § 65.T11-004 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 of the Pacific Ocean 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 doing so is 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 or her 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) *Authority.* The authority for this section includes 33 U.S.C. 1226, 1231; 50 U.S.C. 191, 195.

(e) *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 Dates.* This section becomes effective at 11:59 p.m. PST on March 5, 2004, and will terminate at 11:59 p.m. PDT on September 5, 2004.

Dated: March 3, 2004.

Gerald M. Swanson,

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

[FR Doc. 04-6899 Filed 3-26-04; 8:45 am]

BILLING CODE 4910-15-P

**POSTAL SERVICE**

**39 CFR Part 233**

**Circulars and Rewards**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service has amended its regulations to update the list of types of postal offenses covered by Poster 296, Notice of Reward.

**EFFECTIVE DATE:** March 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Evelena C. Carroll (202) 268-4549.

**SUPPLEMENTARY INFORMATION:** Under certain conditions, the Postal Service pays rewards for information and services leading to the arrest and conviction of persons for certain types of postal offenses. Poster 296, Notice of Reward, gives detailed information regarding the types of offenses covered, the maximum amounts of rewards, and the conditions under which rewards will be paid. This final rule updates Poster 296 to cover certain additional types of offenses, including the mailing of weapons of mass destruction, the facilitation crimes relating to the sexual exploitation of children, and the use of Postal Money Orders for money laundering purposes.

**List of Subjects in 39 CFR Part 233**

Administrative practice and procedure, Banks, banking, Credit, Crime, Infants and children, Law enforcement, Penalties.

■ In view of the considerations discussed above, the Postal Service adopts the following amendments to 39 CFR part 233:

**PART 233—INSPECTION SERVICE AUTHORITY**

■ 1. The authority citation for part 233 continues to read as follows:

**Authority:** 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub. L. 104-208).

**§ 233.2 [Amended]**

■ 2. In § 233.2 paragraphs (b)(1) introductory text, (ii), (ix), (x), and the note following paragraph (b)(2) are revised to read as follows:

**§ 233.2 Circulars and rewards.**

(b) *Rewards.* (1) Rewards will be paid up to the amounts and under the conditions stated in Poster 296, Notice of Reward, for the arrest and conviction of persons for the following postal offenses:

\* \* \* \* \*

(ii) Mailing or causing to be mailed bombs, explosives, poison, weapons of mass destruction, or controlled substances.

\* \* \* \* \*

(ix) Mailing or receiving through the mail any visual depiction involving the use of a minor engaging in sexually explicit conduct, or the use of the mail to facilitate any crime relating to the sexual exploitation of children.

(x) Mailing or causing to be mailed any money which has been obtained

illegally, or the use of Postal Money Orders to launder illicit proceeds.

\* \* \* \* \*

**Note:** The text of Poster 296, referred to in paragraph (b)(1) of this section, reads as follows:

The United States Postal Service offers a reward up to the amounts shown for information and services leading to the arrest and conviction of any person for the following offenses:

Murder or Manslaughter, \$100,000.

The unlawful killing of any officer or employee of the Postal Service while engaged in or on account of the performance of their official duties.

Bombs or Explosives, \$100,000.

Mailing or causing to be mailed any bombs or explosives which may kill or harm another, or injure the mails or other property, or the placing of any bomb or explosive in a postal facility, vehicle, depository or receptacle established, approved or designated by the Postmaster General for the receipt of mail.

Offenses Involving the Mailing of Threatening Communications, Weapons of Mass Destruction, Poisons, or Hazardous Materials, \$100,000. Mailing or causing to be mailed any threatening communications, actual or simulated weapons of mass destruction, dangerous chemicals or biological materials, which may kill or injure another, or injure the mails or other property.

Assault on Postal Employees, \$50,000. Forcibly assaulting any officer or employee of the Postal Service while engaged in or on account of the performance of their official duties.

Controlled Substances, Illegal Drugs, or Cash Proceeds from Illegal Drugs, \$50,000. Mailing or causing to be mailed any controlled substances, illegal drugs, or proceeds from the sale of illegal drugs.

Money Laundering, \$50,000. Mailing or causing to be mailed any money which has been obtained illegally, or the use of postal money orders to launder illicit proceeds.

Postage or Meter Tampering, \$50,000. The unlawful use, reuse, or forgery of postage stamps, postage meter stamps, permit imprints or other postage; or the use, sale or possession with intent to use or sell, any used, forged or counterfeited postage stamp or other postage.

Robbery, \$50,000. Robbery or attempted robbery of any custodian of any mail, or money or other property of the United States under the control and jurisdiction of the United States Postal Service.

Sexual Exploitation of Children, \$50,000. The use of the mails to traffic