

CFR 1.05-1(g); Section 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. § 117.273(a) is revised to read as follows:

**§ 117.273 Canaveral Barge Canal.**

(a) The draws of the Christa McAuliffe bridge, SR 3, mile 1.0, across the Canaveral Barge Canal need only open daily for vessel traffic on the hour and half-hour from 6 a.m. to 10 p.m.; except that from 6:15 a.m. to 8:15 a.m. and from 3:10 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the bridge need not open. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least 3 hours notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in distress.

\* \* \* \* \*

Dated: October 31, 2003.

**Harvey E. Johnson, Jr.,**

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

[FR Doc. 03-28814 Filed 11-18-03; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[COTP San Diego 03-033]

RIN 1625-AA00

**Security Zone: Pacific Ocean, San Diego, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a security zone off the coast of Coronado and Imperial Beach in San Diego, California in support of naval military operations for the purposes of national security. This security zone is necessary to protect the vessels and crew involved in these military operations. Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within this security zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 8 a.m. (p.s.t.) on November 10, 2003, until 11:59 p.m. (p.s.t.) on November 21, 2003.

**ADDRESSES:** Comments and material received from the public, as well as

documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03-033] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101-1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683-6495

**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. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect the vessels and crew involved in this operation.

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**.

Due to complex planning and national security reasons, information regarding the precise location and date of the event necessitating promulgation of this security zone and other logistical details surrounding the event were not provided until a date fewer than 30 days prior to the event. Due to the sensitive nature of the operations involved, it was necessary for this information to be finalized at a later date.

**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 to U.S. ports to be on a higher state of alert because Al-Qaeda and other 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 naval vessels and personnel would have on the public interest, the Coast Guard is establishing a security zone off the coast of San Diego.

The security zone consists of the navigable waters of the Pacific Ocean off San Diego, California in the areas known locally as Coronado and Imperial Beach. The exact coordinates can be found in the regulatory text.

This rule is effective from 8 a.m. (p.s.t.) on November 10, 2003, until 11:59 p.m. (p.s.t.) on November 21, 2003.

Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within this security zone unless authorized by the Captain of the Port, or his designated representative.

**Discussion of Rule**

The United States Navy will be conducting military operations on the navigable waters of the Pacific Ocean off the coast of San Diego, California. Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

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.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

#### Regulatory Evaluation

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).

Due to national security interests, the implementation of this security zone is necessary for the security of the Navy and its vessels and crews. The size of the zone is the minimum necessary to provide for the security of the vessels involved in the military operations. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the Naval vessels. Accordingly, full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary.

#### 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. The security zone will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic can pass safely around the security zone 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 this security zone 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 offer 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 the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

#### Collection of Information

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

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

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

#### Indian Tribal Governments

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

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 M16475.1D, 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 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.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

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

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

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

**Authority:** 33 U.S.C. 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 new § 165.T11–031 to read as follows:

#### § 165.T11–031 Security Zone: Pacific Ocean, San Diego, CA.

(a) *Location.* The navigable waters encompassed by a line connecting the following points: starting from a point on shore at 32°38.88′ N, 117°09.02′ W, then west to point 32°38.88′ N, 117°12.2′ W, then southwest to point 32°36.70′ N, 117°13.83′ W, then south to point 32°32.88′ N, 117°13.83′ W, then east along latitude 32°32.88′ N to shoreline.

(b) *Enforcement period.* This section will be enforced from 8 a.m. (P.s.t.) on November 10, 2003, until 11:59 p.m. (P.s.t.) on November 21, 2003. If the Coast Guard terminates enforcement of this security zone prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into, transit through, loitering, or anchoring within this

security zone by all persons and vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners are advised that the security zone will not restrict the main navigational channel and transit through the channel is not prohibited. Mariners requesting permission to transit through the security zone may request authorization to do so from Captain of the Port or his designated representative. The Coast Guard can be contacted via VHF–FM channel 16.

Dated: November 7, 2003.

**Stephen P. Metruck,**

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

[FR Doc. 03–28810 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 03–16476, Notice 1]

RIN 2127–AI82

### Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds, in part, to petitions for reconsideration of the amendments we made in December 2001 to our May 2000 Advanced Air Bag Rule. Because of time constraints faced by vehicle manufacturers in certifying a portion of their fleet to the advanced air bag requirements, we bifurcated our response. This document addresses detailed seat and dummy positioning procedures. In particular, we are responding to those portions regarding seat positioning procedures when using the 5th percentile adult female test dummy in the barrier test and the low risk deployment test; when using the 3-year-old and 6-year-old test dummies in the low risk deployment test; the fore and aft seat location for rear facing child restraint systems (RFCRSs); and the seat track position for the low risk deployment test. This document responds to test dummy positioning procedure issues, specifically those addressing foot positioning of the 5th percentile adult female test dummy; positioning out-of-position test dummies; and positioning of test dummy hands. This document amends

the definition of “Plane B” and “Plane D” as they relate to test dummy positioning, Point 1 under the low risk deployment tests, and addresses other reference points and definitions. This document also amends the list of child restraint systems required for certain compliance testing. A previous document has already dealt with the time sensitive issues and minor technical issues raised in the petitions for reconsideration.

**DATES:** *Effective date:* The amendments made in this rule are effective January 20, 2004.

*Petitions:* Petitions for reconsideration must be received by January 5, 2004 and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**ADDRESSES:** Submissions may be made [identified by DOT DMS Docket Number NHTSA–03–16476, Notice 1] by any of the following methods:

- Web Site: <http://dms.dot.gov>.
- Follow the instructions on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Rulemaking Analysis and Notices.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Louis Molino, Office of Crashworthiness Standards, at (202) 366–2264, and fax him at (202) 493–2739.