

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[COTP San Diego 02-013]

RIN 2115-AA97

**Security Zones; Cruise Ships, Port of San Diego, CA****AGENCY:** Coast Guard, DOT.**ACTION:** Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is revising the effective period for a moving and fixed security zone 100 yards around all cruise ships that enter, are moored in, or depart from the Port of San Diego. This security zone is needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port San Diego, or his designated representative.

**DATES:** The amendment to § 165.111-30(c) in this rule is effective June 20, 2002. Section 165.111-30, added at 67 FR 6649, February 13, 2002, effective from 11:59 p.m. PST November 5, 2001 through 11:59 p.m. PDT June 21, 2002, as amended in this rule, is extended in effect through 11:59 p.m. PST December 21, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP San Diego 02-013 and are available for inspection or copying at Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Raymond Taylor, Marine Safety Office San Diego, at (619) 683-6495.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On February 13, 2002, we published a temporary final rule for cruise ships entitled "Security Zones; Port of San Diego, California" in the **Federal Register** (67 FR 6648) under § 165.111-030. It has been in effect since November 5, 2001 and is set to expire 11:59 p.m. PDT on June 21, 2002.

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 a NPRM. Due to the terrorist attacks on September 11, 2001

and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established around all cruise ships near the port of San Diego. These security zones are needed to protect the United States and more specifically the people, waterways, and properties near the port. The original TFR was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties in and near the port of San Diego. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists.

The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Diego. Therefore, the public will still have the opportunity to comment on this rule. The measures contemplated by the rule were intended to facilitate ongoing response efforts and prevent future terrorist attack. In this case, doing a NPRM will be repetitious in nature and since delay is inherent in the NPRM process, any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to cruise ships vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to cruise ships. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area. Any delay in the effective date of this rule is impractical and contrary to the public interest.

The Coast Guard will be publishing a NPRM to establish permanent security zones that are temporarily effective under this rule. This revision preserves the status quo within the Port while permanent rules are developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

On September 11, 2001, terrorists launched attacks on commercial and public structures—the World Trade Center in New York and the Pentagon in Arlington, Virginia—killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials. The Federal Bureau of Investigation (FBI) has issued warnings on October 11, 2001 and February 11, 2002 concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan have made it prudent for important facilities and vessels to be on a higher state of alert because Osama Bin Ladin and his Al Qaeda organization, and other similar organizations, have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

These heightened security concerns, together with the catastrophic impact that a terrorist attack against a cruise ship would have to the public interest, makes these security zones prudent on the navigable waterways of the United States. To mitigate the risk of terrorist actions, the Coast Guard has increased safety and security measures on the navigable waterways of the port of San Diego by establishing larger security zones around cruise ships. Vessels operating near cruise ships present possible platforms from which individuals may gain unauthorized access to these vessels or launch terrorist attacks upon these vessels or adjacent population centers. As a result, the Coast Guard is taking additional measures to prevent vessels or persons from accessing the navigable waters close to cruise ships in the port of San Diego.

As of today, the need for security zones around cruise ships still exists. The effective period of this temporary final rule will extend through 11:59 p.m. PST December 21, 2002. This will allow the Coast Guard time to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**, which will include a public comment period, and for a final rule to be put into effect without there being an interruption in the protection provided by cruise ship security zones.

**Discussion of Rule**

This regulation extends the current security zone that prohibits all vessels and people from approaching cruise

ships that are underway or moored near San Diego, California. Specifically, no vessel or person may close to within 100 yards of a cruise ship that is entering, moored in, or departing the Port of San Diego.

A security zone is automatically activated when a cruise ship passes the San Diego sea buoy while entering port and remains in effect while the vessel is moored within in the Port of San Diego, California. When activated, this security zone will encompass a portion of the waterway described as a 100 yard radius around a cruise ship in the Port of San Diego. This security zone is automatically deactivated when the cruise ship passes the San Diego sea buoy on its departure from port. 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.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended the Ports and Waterways Safety Act (PWSA) 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. This authority, under section 7 of the PWSA (33 U.S.C. 1226), supplements the Coast Guard's authority to issue security zones under The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, and imprisonment up to 10 years.

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 Transportation (DOT)(44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway for a limited duration.

The Port of San Diego can accommodate only a few cruise ships moored at the same time. Most cruise ships calls at each location occur on only one day each week, and are generally less than 18 hours in duration. Also, vessels and people may be allowed to enter the zones on a case-by-case basis with authorization from the Captain of the Port.

### 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.

For the same reasons stated in the Regulatory Evaluation section above, 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.

### 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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because we are establishing security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T11-030(c) to read as follows:

#### § 165.T11-030 Security Zones; Cruise ships, Port of San Diego.

\* \* \* \* \*

(c) *Effective Dates.* This section is effective at 11:59 p.m. PST on November 5, 2001 and will terminate at 11:59 p.m. PST on December 21, 2002.

\* \* \* \* \*

Dated: June 12, 2002.

**S.P. Metruck,**

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

[FR Doc. 02-15605 Filed 6-19-02; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 45

[USCG-1998-4623]

RIN 2115-AF38

#### Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule; announcement of effective date.

**SUMMARY:** The Coast Guard is announcing the approval of a collection-of-information requirement pertaining to the special load line regime that was established for Lake Michigan by an interim rule published in April 2002. Owners or operators of dry cargo river barges desiring to operate on certain Lake Michigan routes must submit barge information in order to qualify for the special regime.

**DATES:** 46 CFR 45.181 and 45.183, as published April 23, 2002 (67 FR 19692), are effective June 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call Thomas Jordan, Naval Architecture Division (G-MSE-2), telephone 202-267-0142 or fax 202-267-4816. If you have questions on viewing the docket [USCG-1998-4623], call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

#### SUPPLEMENTARY INFORMATION:

Administration of the U.S. load line regulations requires vessel owners or operators to submit certain information to the Coast Guard or the American Bureau of Shipping (which issues load lines on behalf of the Coast Guard). This load line collection of information is

controlled by the Office of Management and Budget under the Office of Management and Budget (OMB) control no. 2115-0043.

Recently, a special load line regime was established through an interim rule for river barges operating on certain Lake Michigan routes. This interim rule was published in the **Federal Register** on April 23, 2002 (67 FR 19685), and is available electronically through the docket [USCG-1998-4623] web site at <http://dms.dot.gov>. It became effective on May 23, 2002, with the exception of two sections, 46 CFR 45.181 and 45.183, that contain collection-of-information requirements associated with the new regime.

Because these two sections required the collection of information, they could not become effective until they were reviewed and approved by the Office of Management and Budget. As required by 44 U.S.C. 3507(d), we submitted a copy of this interim rule to OMB for its review. On May 28, 2002, after reviewing the rule and the overall load line collection-of-information burden under control no. 2115-0043, OMB approved the collection of information required by this interim rule.

Dated: June 14, 2002.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security and Environmental Protection.*

[FR Doc. 02-15603 Filed 6-19-02; 8:45 am]

**BILLING CODE 4910-15-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 2, 27, 87, 90 and 95

[WT Docket No. 02-08; FCC 02-152]

#### License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts service rules for 27 megahertz of electromagnetic spectrum in the 216-220 MHz, 1390-1395 MHz, 1427-1429.5 MHz, 1429.5-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands, recently reallocated for non-Government use. The licensing plan adopted in this proceeding implements, in part, the Commission's November 1999 Spectrum Policy Statement. The service rules adopted herein establish a flexible