

**§ 931.16 [Amended]**

3. Section 931.16 is amended by removing and reserving paragraphs (e), (u) and (v).

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

[CGD09-02-011]

RIN 2115-AA97

**Security Zones; Captain of the Port Toledo Zone, Lake Erie**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing two permanent security zones on the navigable waters of Lake Erie in the Captain of the Port Toledo Zone. These security zones are necessary to protect the Enrico Fermi 2 Nuclear Power Station and the Davis Besse Nuclear Power Station from possible acts of terrorism. These security zones are intended to restrict vessel traffic from a portion of Lake Erie off the Enrico Fermi 2 and the Davis Besse Nuclear Power Stations.

**DATES:** This rule is effective July 15, 2002.

**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 [CGD09-02-011] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Herb Oertli, Chief of Port Operations, Marine Safety Office Toledo, at (419) 418-6050.

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

On May 8, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Captain of the Port Toledo Zone, Lake Erie" in the **Federal Register** (67 FR 30846). We received 10 letters commenting on the proposed rule. No public hearing was requested, and none was held.

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 permanent security zones being established by the rulemaking are smaller in size than the temporary security zones currently in effect. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by a larger security zone. In addition, the temporary security zones currently in place may impact several private residences, the smaller permanent security zones ensure that these residences are not adversely impacted.

**Background and Purpose**

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in the destruction of the World Trade Center, significant damage to the Pentagon, and tragic loss of life. National security and intelligence officials warn that future terrorists attacks are likely.

This rule establishes a permanent security zone off the waters of Enrico Fermi 2 Nuclear Power Station, Newport, Michigan. This security zone includes waters and adjacent shoreline within a boundary commencing at 41°58.4' N, 083°15.4' W; then northeast to 41°58.5' N, 083°15.0' W; then southeast to 41°58.2' N, 083°13.7' W; then south to 41°56.9' N, 083°13.8' W; then west to 41°56.9' N, 083°15.2' W; then back to the starting point at 41°58.4' N, 083°15.4' W. These coordinates are based upon North American Datum 1983 (NAD 83).

This rule also establishes a permanent security zone off the waters of Davis Besse Nuclear Power Station, Port Clinton, Ohio. This security zone includes waters and adjacent shoreline within a boundary commencing at 41°36.1' N, 083°04.7' W; then north to 41°37.0' N, 083°03.9' W; east to 41°35.9' N, 083°02.5' W; southwest to 41°35.4' N, 083°03.7' W; then west following the shoreline back to the point of origin (NAD 83).

These security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Toledo, or his authorized representative, are prohibited from entering or moving within these zones. The Captain of the Port Toledo may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Toledo's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of this security zone, exact

location and the restrictions involved via Local Notice To Mariners.

**Discussion of Comment and Changes**

The Coast Guard received 10 comments on the proposed rulemaking. Eight comments support the establishment of security zones around the nuclear power stations. The only concern of those in favor of the establishment of security zones was that Coast Guard ensure the permanent security zones do not encompass the beachfront of any private residences. The two comments against establishing permanent security zones questioned the impact of having security zones.

Three comments recommended changes to the security zone coordinates surrounding the Davis Besse Nuclear Power Station. The commenters noted that the Coast Guard's beginning coordinate for the security zone around the David Besse Power Station (41°36.3' N, 083°04.9' W) included several private residences. The comments requested the Coast Guard identify a new starting coordinate that excludes the private residences. After conducting an updated security risk assessment of the facility, the Coast Guard concurs with these comments and has identified the new starting coordinate as 41°36.1' N, 083°04.7' W (NAD 83).

Two comments opposed the security zone around the Enrico Fermi 2 Power Station, one questioning the impact of a security zone and the other stating that allowing fishermen in the area is a better way to protect the area. The security zones create a clear area in which unauthorized persons are readily detectable. This area, coupled with Coast Guard patrols, the assistance of state, local, and the nuclear power plant security personnel, all help to create an area to detect and respond to unauthorized individuals or vessels. Currently, the Captain of the Port Toledo believes that this method is the most effective way of deterring waterborne security threats to these nuclear facilities.

**Regulatory Evaluation**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 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 exempted it from review 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). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory

Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT was not conducted. The change to the starting coordinate discussed above does not change this assessment.

### 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.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Our rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone. In addition, in the event that it may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Toledo to transit through the zone.

### 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. No comments or questions were received from any small businesses.

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 Executive Order 13132, Federalism, and have determined that this rule would not have implications for federalism under that Order.

### 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. We received several comments from property owners that wanted to ensure the security zones did not include any of their beachfront property. The western end of the security zone was adjusted slightly to ensure that the security zone did not encompass any private property.

### 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 would 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. 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), 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

#### § 165.T09–135 [Removed]

2. Remove § 165.T09–135.

#### § 165.T09–136 [Removed]

3. Remove § 165.T09–136.

4. Add § 165.915 to read as follows:

#### § 165.915 Security zones; Captain of the Port Toledo Zone, Lake Erie.

(a) *Security zones.* The following areas are security zones:

(1) *Enrico Fermi 2 Nuclear Power Station.* All waters and adjacent shoreline encompassed by a line commencing at 41°58.4′ N, 083°15.4′ W;

then northeast to 41°58.5' N, 083°15.0' W; then southeast to 41°58.2' N, 083°13.7' W; then south to 41°56.9' N, 083°13.8' W; then west to 41°56.9' N, 083°15.2' W; then back to the starting point at 41°58.4' N, 083°15.4' W (NAD 83).

(2) *Davis Besse Nuclear Power Station*. All waters and adjacent shoreline encompassed by a line commencing at 41°36.1' N, 083°04.7' W; north to 41°37.0' N, 083°03.9' W; east to 41°35.9' N, 083°02.5' W; southwest to 41°35.4' N, 083°03.7' W; then back to the starting point 41°36.1' N, 083°04.7' W (NAD 83).

(b) *Regulations*. (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Toledo. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit through either of these security zones, prior to transiting, must contact the Captain of the Port Toledo at telephone number (419) 418-6050, or on VHF/FM channel 16 and request permission. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority*. In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 3, 2002.

**D.L. Scott,**

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

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD09-02-060]

#### Safety Zones; Captain of the Port Milwaukee Zone

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation of regulation.

**SUMMARY:** The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Milwaukee Zone during July 2002. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Milwaukee Zone.

**DATES:** Effective from 12:01 a.m. (local) on July 1, 2002 to 11:59 p.m. (local) on July 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Chief Dave McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747-7155.

**SUPPLEMENTARY INFORMATION:** The Coast Guard is implementing the permanent safety zones in 33 CFR 165.909 (67 FR 44558, July 3, 2002), for fireworks displays in the Captain of the Port Milwaukee Zone during July 2002. The following safety zones are in effect for fireworks displays occurring in the month of July 2002:

(1) *City of Sheboygan Fourth of July Fireworks, Sheboygan, WI. Location:* All waters and adjacent shoreline of Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in the approximate position 43°44.48' N, 087°42.14' W (NAD 1983), on July 4, 2002 from 9:20 p.m. until 10:05 p.m. In the event of inclement weather on July 4, 2002, the safety zone will be enforced on July 5, 2002 from 9:20 p.m. until 10:05 p.m. This safety zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(2) *City of Kenosha Fourth of July Fireworks, Kenosha, WI. Location:* All waters and adjacent shoreline around the South Pier Light area, Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in approximate position 42°35.17' N, 087°48.33' W (NAD 1983), on July 4, 2002 from 9:15 p.m. until 10:05 p.m. This safety zone will encompass the entrance to Kenosha Harbor and will result in its closure while the safety zone is in effect.

(3) *U.S. Bank (Firststar) Fireworks, Milwaukee, WI. Location:* All waters and adjacent shoreline south of Juneau Park, outer Milwaukee Harbor encompassed by the arc of a circle with an 840-foot radius of the fireworks barge with its center in approximate position 43°02.23' N, 087°53.30' W (NAD 1983), on July 3, 2002 from 9:20 p.m. until 10:10 p.m. In the event of inclement weather on July 3, 2002, the safety zone will be enforced on July 4, 2002 from 9:20 p.m. until 10:10 p.m.

(4) *Manitowoc Municipal Fourth of July Fireworks, Manitowoc, WI. Location:* The primary location will include all waters and adjacent shoreline east of the Manitowoc Yacht Club, Lake Michigan encompassed by the arc of a circle with an 840-foot radius of the fireworks barge in approximate position 44°06.05' N, 087°38.37' W (NAD 1983), on July 4,

2002 from 9:20 p.m. until 10:10 p.m. The alternate location will include all waters and the adjacent shoreline encompassed by the arc of a circle with a 420-foot radius of the fireworks barge with its center in approximate position 44°05.33' N, 087°39.00' W (NAD 1983), on July 4, 2002 from 9:20 p.m. until 10:10 p.m. If display is moved to secondary site, it will temporarily close entrance to Manitowoc Harbor.

(5) *Fourthfest of Greater Racine, Racine, WI. Location:* The primary location will include all waters and adjacent shoreline around the north breakwall, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 42°44.14' N, 087°46.30' W (NAD 1983) on July 4, 2002 from 9:20 p.m. until 10:10 p.m. The alternate location will include all waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 42°44.21' N, 087°46.45' W (NAD 1983) (on the beach north of the northern breakwall) on July 4, 2002 from 9:20 p.m. until 10:10 p.m. In the event of inclement weather on July 4, 2002, the safety zone will be enforced on July 5, 2002 from 9:20 p.m. until 10:10 p.m.

(6) *Celebrate Amerifest, Green Bay, WI. Location:* All waters and adjacent shoreline between the Green Bay & Western Railroad Bridge (mile marker 1.03) and the Mason St. Bridge (mile marker 3.52) on the Fox River on July 4, 2002 from 2 p.m. until 11 p.m. This safety zone will temporarily close the Fox River. (This safety zone does not encompass the water of the East River.)

(7) *South Shore Frolics Fireworks, Milwaukee, WI. Location:* All waters and adjacent shoreline east of the South Shore Park, Milwaukee Harbor encompassed by the arc of a circle with a 280-foot radius with its center in approximate position 42°59.43' N, 087°52.54' W (NAD 1983), on July 12, 13, and 14, 2002 from 9:50 p.m. until 10:30 p.m.

(8) *Kewaunee Annual Trout Festival, Kewaunee, WI. Location:* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°27.30' N, 087°29.46' W (NAD 1983), on July 19, 2002 from 9:20 p.m. until 9:50 p.m. This safety zone will temporarily close the entrance to Kewaunee Harbor.

(9) *Port Washington Fish Days Fireworks, Port Washington, WI. Location:* All waters and adjacent shoreline around the Wisconsin Electric Coal Dock, Lake Michigan encompassed by the arc of a circle with an 840-foot