

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-02-091]

Drawbridge Operation Regulations:
Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation
from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Dock Bridge, mile 5.0, across the Passaic River at Harrison, New Jersey. This temporary deviation will allow the bridge to remain closed to navigation from 9 p.m. on July 26, 2002 through 5 a.m. on July 29, 2002, and from 9 p.m. on August 2, 2002 through 5 a.m. on August 5, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from 9 p.m. on July 26, 2002 through 5 a.m. on August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7165.

SUPPLEMENTARY INFORMATION: The bridge owner, National Passenger Railroad Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, to install new miter rails, bridge blocks, and other general maintenance, at the bridge. The performance of these repairs require the bridge to remain in the closed position.

Although the bridge owner did not provide the required thirty days notice to the Coast Guard prior to the effective date of this temporary deviation, the Coast Guard has approved this deviation because this work must be performed with undue delay to insure continued safe reliable operation of the bridge.

Under this temporary deviation the Amtrak Dock Bridge may remain closed to vessel traffic from 9 p.m. on July 26, 2002 through 5 a.m. on July 29, 2002, and from 9 p.m. on August 2, 2002 through 5 a.m. on August 5, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: July 22, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander,
First Coast Guard District.

[FR Doc. 02-19358 Filed 7-30-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-02-007]

RIN 2115-AA97

Security Zones; Captain of the Port
Milwaukee Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two permanent security zones on the navigable waters of Lake Michigan in the Captain of the Port Milwaukee Zone. These security zones are necessary to protect the nuclear power plants and water intake cribs from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. These zones are intended to restrict vessel traffic from a portion of Lake Michigan.

DATES: This rule is effective July 31, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207.

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 CGD09-02-007 and are available for inspection or copying at Marine Safety Office Milwaukee, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 18, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan" in the **Federal Register** (67 FR 19142). We received 14 letters and 2 petitions 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 this 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.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, 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 regulation establishes two permanent security zones for the following facilities:

- (1) Point Beach nuclear power plant, and
- (2) Kewaunee nuclear power plant.

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 Milwaukee, or his authorized representative, are prohibited from entering or moving within the zones. The Captain of the Port Milwaukee may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Milwaukee'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 these security zones, their exact locations, and the restrictions involved via Local Notice to Mariners and the Broadcast Notice to Mariners.

Discussion of Comments and Changes

During the public comment period, we received 14 letters. All expressed concern that the security zone would exclude fishermen from a good fishing area and that the security zone would do little to prevent acts of terrorism.

One letter was a form comment signed by 129 individuals stating that a no-fishing, no-boating zone, marked by buoys, will help to deter a terrorist attack. However, the ban will prevent fishermen from enjoying good fishing in that area. Another letter was a form comment signed by 145 individuals stating that the current level of security

is sufficient and that they would like to see the area open to fishermen.

The Captain of the Port Milwaukee has carefully weighed security concerns versus public access in the decision to establish security zones. The security zones create a clear area in which unauthorized persons are readily detectable. This area, coupled with regular 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.

Thirteen comments indicated that recreational boaters are being deprived of good fishing areas and a beach area for families and tourists to enjoy. Due to the events of September 11, 2001, both nuclear power plants have already taken steps that prohibit access to beach and park areas. These steps include prohibiting beach and park access, posting signs, and regular roaming patrols. Nuclear plants are critical infrastructure throughout the country, providing electricity to millions of homes and cities. In addition, the plants pose a significant radiological hazard should their structural integrity be compromised. The Captain of the Port Milwaukee has determined that the best practice to ensure the safety of these facilities is to provide a clear area in which no vessels or persons are allowed access without specific permission from the Captain of the Port Milwaukee.

One comment was from a local charter boat captain who was concerned about the impact the security zones would have on the local charter fleet. The Captain of the Port Milwaukee has taken every step possible to minimize the impact of the permanent security zones by decreasing the size from that of the temporary security zone. The permanent security zone sizes were carefully considered and balance the safety and security of the facility versus access to the area. The permanent zone size, while smaller than the temporary zone size, continues to provide a clear area in which to detect persons or vessels while providing for traditional use around the security zones.

The Captain of the Port Milwaukee feels that this action is currently necessary until there is domestic security intelligence to indicate otherwise. As circumstances allow, the Captain of the Port Milwaukee may take steps to relieve the burden imposed on the public by allowing general access, reducing the zone size, or deactivating the security zones. However, this final rule remains unchanged from the proposed rule.

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).

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 is may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Milwaukee 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 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 M16475.1D, this rule is categorically excluded from further environmental documentation.

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 proposes to amend 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.T09-109 and 165T09-110 [Removed]

2. Remove §§ 165.T09-109 and 165.T09-110.

3. Add § 165.916 to read as follows:

§ 165.916 Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan.

(a) *Location.* The following are security zones:

(1) *Kewaunee.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44° 20.647 N, 087° 31.980 W, then easterly to 44° 20.647 N, 087° 31.886 W, then southerly to 44° 20.391 N, 087° 31.866 W, then westerly to 44° 20.391 N, 087° 32.067 W, then northerly following the shoreline back to the point of origin. All coordinates are based upon North American Datum 1983.

(2) *Point Beach.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44° 17.06 N, 087° 32.15 W, then northeasterly to 44° 17.12 N, 087° 31.59 W, then southeasterly to 44° 16.48 N, 087° 31.42 W, then southwesterly to 44° 16.42 N, 087° 32.02 W, then northwesterly along the shoreline back to the point of origin. All coordinates are based upon North American Datum 1983.

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

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (414) 747-7155 or on VHF-FM Channel 16 to seek permission to transit the area. 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 19, 2002.

M.R. Devries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 02-19354 Filed 7-26-02; 4:02 pm]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02-008]

RIN 2115-AA97

Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period of a temporary safety zone in the Gulf of the Farallones, North Pacific Ocean, surrounding the site of a sunken freight vessel, JACOB LUCKENBACH, from which the Coast Guard and other government agencies are removing oil trapped inside the wreck. The purpose of this safety zone is to protect persons and vessels from hazards associated with oil removal operations. Persons and vessels are prohibited from entering into or transiting through the safety zone unless

authorized by the Captain of the Port, or his designated representative.

DATES: The amendment to § 165.T11-082(c) in this rule is effective July 25, 2002. Section 165.T11-082, added at 67 FR 39600, June 10, 2002, effective from 11:59 p.m. PDT on May 14, 2002 to 11:59 p.m. PDT July 31, 2002, as amended in this rule, is extended in effect to 11:59 p.m. PDT on September 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 02-008] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, California 94501-5100 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 10, 2002, we published a temporary final rule (TFR) titled "Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA" in the **Federal Register** (67 FR 39598) under § 165.T11-082. It has been in effect since May 14, 2002 and is set to expire 11:59 p.m. PDT on July 31, 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. The original TFR was urgently required because once it was decided that oil removal was the most prudent means of protecting against future discharges from the sunken vessel, it was determined that publishing a NPRM and delaying the effective date of the safety zone would be contrary to the public interest. As of today, the need for this safety zone still exists because inclement weather has thwarted oil removal operations for several weeks and thus much of the oil has yet to be removed from the vessel. Accordingly, using the same rationale that was used for the original TFR, publishing a NPRM and delaying the effective date would be contrary to the public interest since the oil removal operations necessitating this safety zone would likely terminate before the rulemaking process was complete.

For the same reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30