

of these rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the eligible persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by federal and state authorities other than the Commission. Assuming, arguendo, that such persons and entities would be small entities for purposes of the RFA, the Commission believes that the Proposal would not have a significant economic impact on them because it would relieve a greater number of those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA,<sup>17</sup> that the Proposal will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any person who believes that these rules, as proposed, would have a significant economic impact on its operation.

**List of Subjects in 17 CFR Part 4**

Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options.

Accordingly, 17 CFR chapter I is proposed to be amended as follows:

**PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS**

1. The authority citation for part 4 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6b, 6c, 6(c), 6l, 6m, 6n, 6o, 12a, and 23.

**Subpart A—General Provisions, Definitions and Exemptions**

2. Section 4.5 is proposed to be amended by revising paragraph (c)(2)(i) to read as follows:

**§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term “commodity pool operator.”**

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*

(i) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1) of this chapter; *Provided, however,* That in

addition, with respect to positions in commodity futures or commodity option contracts which do not come within the meaning and intent of § 1.3(z)(1), a qualifying entity may represent that:

(A) The aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity’s portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided further,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such five percent; or

(B) The aggregate notional value of such positions does not exceed the liquidation value of the qualifying entity’s portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into. For the purpose of this paragraph (c)(2)(i)(B), the term “notional value” shall be calculated for each such futures position by multiplying the size of the contract, in contract units, by the current market price per unit and for each such option position by multiplying the size of the contract, in contract units, by the strike price per unit;

\* \* \* \* \*

Issued in Washington, DC, on October 22, 2002, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02-27309 Filed 10-25-02; 8:45 am]

**BILLING CODE 6351-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[COTP Los Angeles-Long Beach 02-004]

**RIN 2115-AA97**

**Security Zones; San Pedro Bay, CA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish moving and fixed security zones around and under all cruise ships located on San Pedro Bay, California, in and near the ports of Los Angeles and Long Beach. These proposed security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into

these zones will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

**DATES:** Comments and related material must reach the Coast Guard on or before November 22, 2002.

**ADDRESSES:** You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, Waterways Management Division, 1001 S. Seaside Avenue, Building 20, San Pedro, California 90731. The Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Division between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732-2020.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Los Angeles-Long Beach 02-004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so, as required by 5 U.S.C. 553(d)(3).

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Division at the

<sup>17</sup> 5 U.S.C. 605(b).

address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

### 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 growing tensions in 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 Magnuson Act (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 would have on the public interest, the Coast Guard proposes to establish security zones around and under cruise ships entering, departing, or moored within the ports of Los Angeles and Long Beach. These security zones will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard believes the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

On November 1, 2001, we issued a similar rule under docket COTP Los Angeles-Long Beach 01-011, and published that rule in the **Federal Register** (67 FR 2571, Jan. 18, 2002) under temporary section 165.T11-058 of Title 33 of the Code of Federal

Regulations (CFR). Under temporary section 165.T11-058, which expired at 11:59 PDT on May 1, 2002, the Coast Guard established a 100-yard security zone around all cruise ships that entered, were moored in, or departed from the Port of Los Angeles and that were anchored at Catalina Island.

On May 1, 2002, another temporary rule was issued, under docket COTP Los Angeles-Long Beach 02-009, and was published in the **Federal Register** (67 FR 31955, May 13, 2002) under temporary section 165.T11-065 of Title 33 of the CFR. Under temporary section 165.T11-065, which expires at 11:59 p.m. PST on December 1, 2002, the Coast Guard established moving and fixed security zones around cruise ships located on San Pedro Bay, California, near and in the ports of Los Angeles and Long Beach. The Captain of the Port has determined the need for continued security regulations exists.

Accordingly, this rulemaking proposes to make permanent the temporary security zones established on May 1, 2002, in the rule published in the **Federal Register** at 67 FR 31955 on May 13, 2002.

### Discussion of Proposed Rule

The Coast Guard proposes to establish moving and fixed security zones around all cruise ships that are anchored, moored, or underway within the Los Angeles and Long Beach, port areas. These proposed security zones will take effect upon the entry of any cruise ship into the waters within three nautical miles outside of the Federal breakwaters encompassing San Pedro Bay and will remain in effect until the cruise ship departs the three nautical mile limit. This proposed rule, for security concerns, prohibits entry of any vessels inside the security zone surrounding a cruise ship. These security zones are within a 100 yard radius around any cruise ship that is anchored at a designated anchorage; within a 100 yard radius around any cruise ship that is moored, or in the process of mooring at any berth within the Los Angeles or Long Beach port areas; and within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway.

These security zones are needed for national security reasons to protect cruise ships, the public, transiting vessels, adjacent waterfront facilities, and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these

security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

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 and 33 CFR part 27, 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 request the use of resources and personnel of other government agencies to assist in the patrol and enforcement of the regulation. The Captain of the Port retains discretion to initiate Coast Guard civil penalty action against non-complaint parties pursuant to the PWSA, or, refer appropriate cases to the cognizant U.S. Attorney Office for disposition. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

### Regulatory Evaluation

This proposed 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant because the zones will encompass only a small portion of the waterway. Furthermore, vessels will be able to pass safely around the zones, and 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 sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships, their crews and passengers, other vessels operating in the vicinity of the cruise ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route to the Ports of Los Angeles and Long Beach and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during cruise ship transits, which will last for approximately 30 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the Ports of Los Angeles and Long Beach.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions of the ports of Los Angeles or Long Beach near a cruise ship covered by these security zones. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited periods of time while the cruise ships are transiting, moored, or in anchorage. Delays, if any, are expected to be less than thirty minutes in duration.

Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship will last about 30 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the COTP or his or her designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

#### **Collection of Information**

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### **Indian Tribal Governments**

This proposed 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### **Energy Effects**

We have analyzed this proposed 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 proposed 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 proposing to establish security zones. A "Categorical Exclusion Determination" is 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 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.

2. Add § 165.1154 to read as follows:

#### § 165.1154 Security Zones; Cruise Ships, San Pedro Bay, California.

(a) *Definition.* "Cruise ship" as used in this section 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 Port of Los Angeles or Port of Long Beach.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within three nautical miles of the Federal breakwaters;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is moored, or is in the process of mooring, at any berth within the Los Angeles or Long Beach

port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway either on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1-800-221-USCG (8724) 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 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's security zone unless it is either ordered by, or given permission from, the COTP Los Angeles-Long Beach to do otherwise.

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

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Los Angeles Port Police and the Long Beach Police Department.

Dated: October 4, 2002.

**J.M. Holmes,**

*Captain, Coast Guard, Captain of the Port, Los Angeles-Long Beach.*

[FR Doc. 02-27375 Filed 10-25-02; 8:45 am]

**BILLING CODE 4910-15-U**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[NH-01-48-7174b; A-1-FRL-7376-4]

#### Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision consists of a new rule, PART Env-A 623, "Prevention of Significant Deterioration of Air Quality Permitting," that adopts into New Hampshire's SIP the federal PSD program provisions. The SIP revision also amends New Hampshire's permit procedural rule, PART Env-A 205, "Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate," that make the rule consistent with the new state PSD rule. In another document published elsewhere in this issue of the **Federal Register**, EPA is approving the State's SIP submittal as a direct final rulemaking. The action will ensure that New Hampshire and EPA will interpret and enforce the same PSD rules providing regulatory certainty to the state's regulated community. The approval of this revision will make New Hampshire's PSD program consistent with the federal plan requirements for a SIP-approved PSD program.

**DATES:** Written comments must be received on or before November 27, 2002.

**ADDRESSES:** Comments may be mailed to Steven A. Rapp, Air Permits, Toxics, and Indoor Programs, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

**FOR FURTHER INFORMATION CONTACT:** Brendan McCahill, (617) 918-1652. E-mail at [McCahill.Brendan@epa.gov](mailto:McCahill.Brendan@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be