

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

1. The authority citation for part 165 is revised 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; Department of Homeland Security Delegation No. 0170.

2. Revise § 165.1151 to read as follows:

**§ 165.1151 Security Zones; Liquefied Hazardous Gas Tank Vessels, San Pedro Bay, California.**

(a) *Definition.* “Liquefied Hazardous Gas” as used in this section means a liquid containing one or more of the products listed in Table 127.005 of this part that is carried in bulk on board a tank vessel as liquefied petroleum gas, liquefied natural gas, or similar liquefied gas products.

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

(1) All waters, extending from the surface to the sea floor, within a 500 yard radius around any liquefied hazardous gas (LHG) tank vessel 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 breakwater;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 500 yard radius around any LHG tank vessel that is moored, or 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;

(3) All waters, extending from the surface to the sea floor, within 1000 yards ahead and 500 yards on each side and astern of any LHG tank vessel 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 or her designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (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 shall comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When any LHG tank vessels approach within 500 yards of a vessel

that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the LHG tank vessel's security zone unless it is either ordered by or given permission from the Captain of the Port Los Angeles-Long Beach to do otherwise.

(d) *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.

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

Dated: February 18, 2003.

**John M. Holmes,**

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

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**BILLING CODE 4910–15–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[COTP Los Angeles–Long Beach 03–001]

RIN 1625–AA00

**Safety Zone; Red Baron Squadron Aerobatic Flight Demonstration, Long Beach, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of Long Beach, California for the Red Baron Squadron aerobatic flight demonstration on April 12 and 13, 2003. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage beneath the aerobatic flight demonstration. Persons and vessels are prohibited from entering into or transiting through this safety zone unless authorized by the Captain of the Port, Los Angeles-Long Beach.

**DATES:** This rule is effective from 10 a.m. to 12 p.m. (p.d.t.) on April 12 and 13, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket (COTP Los Angeles-Long Beach 03–001) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/ Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 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 of Waterways Management Division, at (310) 732–2020.

**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. Final dates and other logistical details for the event were not provided to the Coast Guard in time to draft and publish an NPRM prior to the event, as the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to provide a safety zone to ensure the safety of the spectators and other vessels in the area.

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 additional administrative review within the Coast Guard's Department of Homeland Security following the Coast Guard's recent shift to DHS. Withholding the implementation of the safety zone is impractical and contrary to the public interest as the dates of the flight demonstration will have past.

**Background and Purpose**

At the request of the Federal Aviation Administration (FAA) Flight Standards District Office in Long Beach, California, the Coast Guard is establishing a temporary safety zone in the navigable waters of Long Beach, California for the Red Baron Squadron aerobatic flight demonstration on April 12 and 13, 2003. One these dates, Red Baron Squadron is scheduled to perform a 15-minute aerobatic flight demonstration. This flight demonstration team consists of a three ship formation, performing aerobatic flight maneuvers in close proximity to each other, over Long Beach harbor between the hours of 10 a.m. and 12 p.m. (P.d.t.) both days in conjunction with the Grand Prix of Long Beach.

At the request of the FAA, the Coast Guard will close the waterway to all vessels and persons 30 minutes prior to the start of the aerobatic flight demonstration and will reopen the waterway approximately 30 minutes after the conclusion of the aerobatic flight demonstration if the Patrol Commander determines that it is safe to do so. A broadcast notice to mariners will be issued for this event.

### Discussion of Rule

The following described area constitutes a temporary safety zone: All waters of Long Beach harbor, from surface to bottom, encompassed by lines connecting points beginning at latitude 33°45'45" N, longitude 118°10'28" W; then to 33°45'17" N, 118°09'53" W; then to 33°44'41" N, 118°10'37" W; then to 33°45'09" N, 118°11'09" W, and then returning to the point of origin. (Datum: NAD 1983). This area is approximately 1,400 yards wide and 1,800 yards long and is geographically centered between the Queen Mary, Island Grissom, Island White, and Island Freeman near Long Beach, California.

Persons and vessels are prohibited from entering into or transiting through this temporary safety zone during the aerobic flight demonstration. By prohibiting persons and vessels from entering the waters beneath the aerobic flight demonstration, the risk of loss of life and damage to property will be significantly reduced. Without this safety zone, the aerobic flight demonstration would be cancelled.

U.S. Coast Guard personnel will enforce this safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, which during this event may include the Coast Guard Auxiliary, Long Beach Lifeguards, and Long Beach Police Department.

Section 165.23 of title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in this Safety Zone.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety 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.

### 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 the limited scope of the safety zone, the fact that vessel traffic can pass safely around the zone, and the short duration of the zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of 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.

This rule will possibly 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 the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

For these reasons and the 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 your small business or organization is affected by this rule 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. 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 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 a safety zone. 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.

2. Add a new § 165.T11-070 to read as follows:

#### § 165.T11-070 Safety Zone; Red Baron Squadron aerobatic flight demonstration, Long Beach, CA.

(a) *Location.* The following described area constitutes a temporary safety zone: All waters of Long Beach harbor, from

surface to bottom, encompassed by lines connecting points beginning at latitude 33°45'45"N, longitude 118°10'28"W; then to 33°45'17"N, 118°09'53"W; then to 33°44'41" N, 118°10'37"W; then to 33°45'09"N, 118°11'09"W, and then returning to the point of origin (Datum: NAD 1983).

(b) *Effective period.* This section is effective from 10 a.m. to 12 p.m. (PDT) on April 12 and 13, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number (800) 221-8724 or the Patrol Commander on VHF-FM channel 16 (156.8 MHz). 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.

Dated: March 10, 2003.

**John M. Holmes,**

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

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**BILLING CODE 4910-15-P**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 20

RIN 2900-AK71

#### Board of Veterans' Appeals: Rules of Practice—Appeal Withdrawal

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends a Board of Veterans' Appeals Rule of Practice to remove an unnecessary restriction on who may withdraw an appeal to the Board of Veterans' Appeals and to clarify appeal withdrawal procedures.

**DATES:** *Effective Date:* April 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-565-5978).

**SUPPLEMENTARY INFORMATION:** Initial decisions on claims for Federal veterans' benefits are made at Department of Veterans Affairs (VA) field offices throughout the nation.

Claimants may appeal those decisions to the Board of Veterans' Appeals (Board).

On February 1, 2002, VA published in the **Federal Register** a proposed rule to amend the Board of Veterans' Appeals Rule of Practice 204(c) (38 CFR 20.204(c)) by removing the current restriction on a representative's authority to withdraw an appeal without having written consent from the appellant. 67 FR 4939. VA also proposed to amend Rule of Practice 204 to fill in currently missing details about appeal withdrawal procedures and to remove as superfluous the current provision in that rule stating that the agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal because that restriction would be covered under revised 38 CFR 20.204(a). The amendment is intended to remove an unnecessary restriction on who may withdraw an appeal to the Board of Veterans' Appeals and to clarify appeal withdrawal procedures.

We received comments from two County veterans service officers. Both commenters opposed the proposed rule with respect to removing the restriction on a representative's authority to withdraw an appeal. The commenters maintained that the duty of a representative with the power of attorney is to assist, inform, and advise the appellant on the best course of action to take in his or her claim, but that the ultimate decision to pursue the claim should be left only to the appellant. Both commenters argued that the proposed rule would circumvent this process and potentially deprive the appellant of the opportunity to make a critical decision in his or her appeal.

We agree that the appellant is the one making the decisions. This amendment will not change that basic tenet of representation. All the rule will do is to make it possible for a representative to execute the appellant's desire to withdraw an appeal. The amendment will not result in any fundamental change in the nature of representation. Moreover, as we observed in the proposed-rule notice, an appellant could contractually limit the authority of his or her representative if such a limitation was deemed warranted by the parties. Accordingly, we make no change based on these comments. Based on the rationale set forth above and in the proposed rule, we adopt the amendments as proposed, with a nonsubstantive change to reflect the current title of the official with whom the withdrawal may be filed.