

## 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. 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 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. This proposed rule fits paragraph 34(g) as it establishes a safety zone. 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; Department of Homeland Security Delegation No. 0170.

2. From 9 p.m. June 14, 2003, to 10:30 p.m. June 15, 2003, add temporary § 165.T01-015 to read as follows:

#### § 165.T01-015 Safety Zone; Hudson River, Middle Ground Flats, Hudson, NY.

(a) *Regulated Area.* The following area is a safety zone: All waters of the Hudson River within a 100-yard radius of the fireworks barge in approximate position 42°15'21.0" N 073°47'58" W, about 495 feet east of Hudson River Lighted Buoy 133 (LLNR 38585).

(b) *Enforcement period.* This section will be enforced from 9 p.m. to 10:30 p.m. on Saturday, June 14, 2003. In case of inclement weather this section will

be enforced from 9 p.m. to 10:30 p.m. on Sunday, June 15, 2003.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 24, 2003.

**C.E. Bone,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

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**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Diego 03-011]

RIN 1625-AA00

#### Security Zone; Waters Adjacent to National City Marine Terminal

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone in the waters adjacent to the National City Marine Terminal in San Diego Bay, San Diego, CA. This action is needed to protect the U.S. Naval vessel(s) and their crew(s) during military outload evolutions at the National City Marine Terminal from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry, transit, or anchoring in this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before July 7, 2003.

**ADDRESSES:** You may mail comments and related material to Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101. The Port Operations Department 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 Marine Safety Office San Diego, Port Operations Department, 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:** Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683-6495.

#### 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 San Diego 03-011), 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 they 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 Marine Safety Office San Diego at the 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

The United States Navy conducts military outload operations from the National City Marine Terminal. These operations involve the loading of men and equipment onboard USNS ships and other Naval vessels for the furtherance of our national security. These onload evolutions are often short fused and are directed at a moments notice. In an effort to protect the onload

evolutions and provide adequate notice to the public, the Captain of the Port of San Diego proposes to establish a permanent security zone around the National City Marine Terminal which will be enforced when such a military onload evolution occurs.

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. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard proposes to establish a permanent security zone in the navigable waters of the United States adjacent to the National City Marine Terminal. The action proposed under this rule is necessary to protect the U.S. Naval vessel(s) and their crew(s) during these military outload evolutions at the National City Marine Terminal from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature.

#### Discussion of Proposed Rule

Due to National Security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for the U.S. Naval vessel(s), their crew(s), adjoining areas, and the public.

The military outload evolutions involve the transfer of military equipment from a shore side staging area to various Military Sealift Command vessels and other contracted vessels. The security zone will accompany other security measures implemented at the National City Marine Terminal waterfront facility.

Due to complex planning, national security reasons, and coordination with all military schedules, information regarding the precise location and date of the military outloads will not be circulated, however, prior to any outload evolution, the public will be notified that the security zone is in effect and will be enforced. The enforcement of the security zone will be announced via broadcast notice to mariners, local notice to mariners, or by any other means that is deemed appropriate.

This security zone is established pursuant to the authority of 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 are subject to he penalties set forth in 50 U.S.C. 192 which include seizure and forfeiture of the vessel, a monetary penalty of not more than \$12,500, and imprisonment for not more than 10 years.

#### 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 Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because: (i) The zone will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; and (iii) vessels 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.

Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessel(s), their crew(s), and the public. Accordingly, full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DHS is unnecessary.

#### 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 rule will not have a significant economic impact on a substantial number of small entities.

Most of the traffic in this area is recreational traffic and sightseers. The economic impact is minimal by having them gain permission to transit through the zone from the COTP or his representative. The Coast Guard has coordinated with known private business owners in an effort to reduce any substantial impact on business.

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 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule or if you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, U.S. Coast Guard Marine Office San Diego at (619) 683-6495.

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 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 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 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 because we are establishing a security zone. A “Categorical Exclusion Determination” and checklist are available in the docket for inspection or copying where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping 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; Department of Homeland Security Delegation No. 0170.

2. Add § 165.1109 to read as follows:

#### § 165.1109 Security Zone; National City Marine Terminal, San Diego, CA.

(a) *Location.* The security zone consists of the navigable waters surrounding the National City Marine Terminal and encompassing Sweetwater Channel. The limits of this security zone are more specifically defined as the area enclosed by the following points: starting on shore at 32°39'25" N 117°07'15" W, then extending northerly to 32°39'32" N 117°07'16" W, then extending westerly to 32°39'29" N 117°07'36" W, then southerly to 32°39'05" N 117°07'34" W, and then easterly to shore at 32°39'06" N 117°07'14.5" W. All coordinates are North American Datum 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into, transit through, or anchoring within the security zone by all vessels is prohibited during military outloads, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this section.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port on VHF channel 16 or VHF channel 21A to seek permission to transit the area. Additionally, the COTP representative may be reached at (619) 683–6470 ext 2. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the San Diego Harbor Police.

(d) *Notice.* Enforcement of the security zone will be announced via broadcast notice to mariners, local notice to mariners, or by any other means that is deemed appropriate.

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

Dated: April 17, 2003.

**Stephen P. Metruck,**

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

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Chapter I

[OPP–2003–0132; FRL–7302–8]

RIN: 2070–AD57

#### Human Testing; Advance Notice of Proposed Rulemaking

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** This advance notice of proposed rulemaking announces EPA’s plan to conduct rulemaking about criteria and standards EPA would apply in deciding the extent to which it will consider or rely on various types of research with human subjects to support its actions. This notice also initiates the rulemaking process by requesting public comments and suggestions on a broad range of issues relating to this subject.