

Statement of Energy Effects under Executive Order 13211.

### 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ A new temporary § 165.T09–025 is added to read as follows:

#### § 165.T09–025 Safety Zone; Saginaw River, Bay City, MI.

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

(1) All waters of the Saginaw River within a 300-yard radius of the fireworks launch platform in approximate position 43°35'55" N, 083°53'40" W (off Veteran's Park)

(2) All waters of the Saginaw River within a 300-yard radius of the fireworks launch platform in approximate position 43°35'55" N, 083°53'30" W (off Wenonah Park) (NAD 83).

(b) *Effective period.* This regulation is effective from 10:05 p.m. on July 1, 2004 until 10:55 p.m. on July 4, 2004.

(c) *Enforcement period.* The safety zones in this section will be enforced from 10:05 p.m. until 10:55 p.m., each day of the effective period.

(d) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

Dated: June 9, 2004.

**P.G. Gerrity,**

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

[FR Doc. 04–13977 Filed 6–18–04; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03–009]

RIN 1625–AA00

#### Security Zones; San Francisco Bay, San Francisco, CA and Oakland CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing fixed security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These security zones are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

**DATES:** This rule is effective August 1, 2004.

**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 COTP 03–009 and are available for inspection or copying at the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

**SUPPLEMENTARY INFORMATION:**

#### Regulatory Information

On September 21, 2001, we issued a temporary final rule under docket COTP San Francisco Bay 01–009, and published that rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). That rule (codified as 33 CFR 165.T11–095) established a security zone extending 1800 yards seaward from the Oakland airport shoreline and a security zone extending 2000 yards seaward from the San Francisco airport shoreline. Upon further reflection, and after discussion with airport officials and members of the public, we issued a new temporary rule in Title 33 of the Code of Federal Regulations. That rule (67 FR 5482, Feb. 6, 2002, codified as 33 CFR 165.T11–097) reduced the size of the security zones to 1000 yards

seaward from both the Oakland and San Francisco airport shorelines.

We received several written comments about the 1000-yard security zones established by that rule (33 CFR 165.T11–097). Virtually all of those comments urged a reduction in size of the security zones in order to allow increased public access to San Francisco Bay for fishing, windsurfing and similar uses. As a result, we issued a new temporary rule (67 FR 44566, July 3, 2002) that further reduced the size of the security zones to 200 yards seaward from both the Oakland and San Francisco airport shorelines. That rule (codified as 33 CFR 165.T11–086) expired on December 21, 2002.

Since the time that the security zones were allowed to expire, there were several security incursions involving personnel gaining access to the airports from boats. In addition, the Department of Homeland Security in consultation with the Homeland Security Council, raised the national threat level on December 21, 2003, and since then, from an Elevated to High risk of terrorist attack based on intelligence indicating that Al-Qaeda was poised to launch terrorist attacks against U.S. interests. To address these security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against one of these airports would have on the public interest, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA" in the **Federal Register** (69 FR 2320, January 15, 2004) proposing to establish permanent security zones extending approximately 200 yards seaward around the Oakland and San Francisco airports. We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

#### Penalties for Violating Security Zone

Vessels or persons violating this security zone 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, 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 would enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation.

### 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 Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other 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 Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (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 these airports would have on the public, the Coast Guard is establishing two fixed security zones within the navigable waters of San Francisco Bay extending approximately 200 yards seaward from the shorelines of the Oakland International Airport and the San Francisco International Airport. The two security zones are designed to provide increased security for the airports, while minimizing the impact to vessel traffic, fishing, windsurfing and other activities upon San Francisco Bay.

Two hundred yards from the shoreline is estimated to be an adequate zone size to provide increased security for each airport by providing a standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel. Buoys will be installed by the respective airports to indicate the perimeter of each of the security zones.

This rule, for security reasons, will prohibit entry of any vessel or person inside the security zone without specific authorization from the Captain of the Port or his designated representative. Due to heightened security concerns, and the catastrophic impact a terrorist attack on one of these airports would have on the public, the transportation system, and surrounding areas and communities, security zones are prudent for these airports.

### Discussion of Comments and Changes

We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. The only change made in this final rule is a minor correction to the last geographical coordinate used to describe the security zone around the San Francisco International Airport. A more accurate charting program than was originally used revealed that the latitude and longitude used in the NPRM indicates a position slightly offshore from the intended on-shore position. This change is not considered significant, and the general description of the security zones is not effected.

### 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the zones, the effect of this regulation is not significant because: (i) These security zones are established in an area of the San Francisco Bay that is seldom used, (ii) the zones encompass only a small portion of the waterway; (iii) vessels are 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.

The size of the security zones is the minimum necessary to provide adequate protection for the San Francisco International Airport and the Oakland International Airport. The entities most likely to be affected are small recreational vessel traffic engaged in fishing or sightseeing activities.

### 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 for several reasons: these security zones do not occupy an area of the San Francisco Bay that is frequently transited, small vessel traffic is able to 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. Buoys are being installed to mark the perimeter of the security zone at each airport and small entities and the maritime public will be advised of these security zones via public notice to mariners.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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.

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 1-800-REG-FAIR (1-888-734-3247).

**Collection of Information**

This proposed 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 might 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 analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone. An “Environmental Analysis Check List” and a draft “Categorical Exclusion Determination” (CED) will be available in the docket where located under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reports 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1192 to read as follows:

**§ 165.1192 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.**

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

(1) *San Francisco International Airport Security Zone.* This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	Longitude
37°36'19" N	122°22'36" W
37°36'45" N	122°12'18" W
37°36'26" N	122°21'30" W
37°36'31" N	122°21'21" W
37°36'17" N	122°20'45" W
37°36'37" N	122°20'40" W
37°36'50" N	122°21'08" W
37°37'00" N	122°21'12" W
37°37'21" N	122°21'53" W
37°37'39" N	122°21'44" W
37°37'56" N	122°21'51" W
37°37'50" N	122°22'20" W
37°38'25" N	122°22'54" W
37°38'23" N	122°23'01" W

and along the shoreline back to the beginning point.

(2) *Oakland International Airport Security Zone.* This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	Longitude
37°43'35" N	122°15'00" W
37°43'40" N	122°15'05" W
37°43'34" N	122°15'12" W
37°43'24" N	122°15'11" W
37°41'54" N	122°13'05" W
37°41'51" N	122°12'48" W
37°41'53" N	122°12'44" W
37°41'35" N	122°12'18" W
37°41'46" N	122°12'08" W
37°42'03" N	122°12'34" W
37°42'08" N	122°12'32" W
37°42'35" N	122°12'30" W
37°42'40" N	122°12'06" W

and along the shoreline back to the beginning point.

(b) *Regulations.* (1) Under § 165.33, entering, transiting through, or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of a security zone may contact the Captain of the Port at telephone number 415-399-3547 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.

(c) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 3, 2004.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 04-13974 Filed 6-18-04; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No. 2004-P-036]

#### Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Interpretation.

**SUMMARY:** The United States Patent and Trademark Office (Office) recently published a final rule revising the patent term extension and patent term adjustment provisions of the rules of practice. This document further explains the Office's policy since 2000 concerning one of the patent term adjustment provisions of the rules of practice.

**DATES:** *Applicability:* The patent term adjustment provisions of the rules of practice apply to all original (non-reissue) applications, other than for a design patent, filed on or after May 29, 2000, and to patents issued on such applications.

**FOR FURTHER INFORMATION CONTACT:** Kery A. Fries, Legal Advisor, Office of Patent

Legal Administration, by telephone at (703) 305-1383, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or by facsimile to (703) 746-3240, marked to the attention of Kery A. Fries.

**SUPPLEMENTARY INFORMATION:** The Office recently published a final rule revising the patent term extension and patent term adjustment provisions of the rules of practice in title 37 of the Code of Federal Regulations (CFR). *See Revision of Patent Term Extension and Patent Term Adjustment Provisions*, 69 FR 21704 (Apr. 22, 2004), 1282 *Off. Gaz. Pat. Office* 100 (May 18, 2004) (final rule). The primary purpose of this final rule was to revise the rules of practice in patent cases to indicate that under certain circumstances a panel remand by the Board of Patent Appeals and Interferences shall be considered “a decision in the review reversing an adverse determination of patentability” for purposes of patent term extension or patent term adjustment. *See* 69 FR at 21704, 1282 *Off. Gaz. Pat. Office* at 100.

This final rule, however, also adopted other miscellaneous changes to the patent term adjustment regulations. *See* 69 FR at 21704, 1282 *Off. Gaz. Pat. Office* at 100. One such miscellaneous change was a slight revision to 37 CFR 1.703(f) so that its language would more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The explanatory text concerning 37 CFR 1.703(f) indicated that:

The language of former § 1.703(f) misled applicants into believing that delays under 35 U.S.C. 154(b)(1)(A) (§§ 1.702(a) and 1.703(a)) and delays under 35 U.S.C. 154(b)(1)(B) (§§ 1.702(b) and 1.703(b)) were overlapping only if the period of delay under 35 U.S.C. 154(b)(1)(A) occurred more than three years after the actual filing date of the application.<sup>1</sup> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A).

<sup>1</sup> Another way of explaining this is: Based upon the contentions presented in a number of patent term adjustment petitions under 37 CFR 1.705, it has become apparent to the Office that some applicants did not fully appreciate that delays under 35 U.S.C. 154(b)(1)(A) (§§ 1.702(a) and 1.703(a)) and delays under 35 U.S.C. 154(b)(1)(B) (§§ 1.702(b) and 1.703(b)) may still be overlapping delays under 35 U.S.C. 154(b)(2)(A), even if the period of delay under 35 U.S.C. 154(b)(1)(A) did not occur more than three years after the actual filing date of the application.

*See* 69 FR at 21706, 1282 *Off. Gaz. Pat. Office* at 101. The Office has subsequently determined that there is a need for further explanation of the meaning of this statement.

35 U.S.C. 154(b)(2)(A) provides that: “[t]o the extent that periods of delay attributable to grounds specified in paragraph (1) [*i.e.*, 35 U.S.C. 154(b)(1)] overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.” *See* 35 U.S.C. 154(b)(2)(A). The Office revised 37 CFR 1.703(f) in this final rule to read “[t]o the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.” *See* 69 FR at 21711, 1282 *Off. Gaz. Pat. Office* at 106. Therefore, the change to 37 CFR 1.703(f) in this final rule makes its language track the language of 35 U.S.C. 154(b)(2)(A).

The change to 37 CFR 1.703(f) in this final rule and the accompanying explanatory text in the supplementary information section of this final rule was not a substantive change to 37 CFR 1.703(f) or a change to the Office's interpretation of 35 U.S.C. 154(b)(2)(A). This change was simply a restatement of the position taken by the Office when implementing the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA)<sup>2</sup> in 2000. Specifically, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay “overlap” under 35 U.S.C. 154(b)(2)(A).

The position set forth in the supplementary information section of this final rule is also consistent with the section-by-section analysis<sup>3</sup> of 35 U.S.C.

<sup>2</sup> Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999).

<sup>3</sup> The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted into law as part of Pub. L. 106-113. The Conference Report for H.R. 3194, 106th Cong., 1st Sess. (1999), which resulted in Pub. L. 106-113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the