

**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.T11–037 to read as follows:

**§ 165.T11–037 Security Zone; Navigable Waters of the United States Surrounding Pier Three at Military Ocean Terminal Concord (MOTCO), Concord, California.**

(a) *Location.* The security zone will encompass the navigable waters, extending from the surface to the sea floor, within 500 yards of any portion of Pier Three at Military Ocean Terminal Concord (MOTCO), California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, 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 this security zone may contact the Patrol Commander on scene on VHF–FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 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 designated representative.

(c) *Effective period.* This section becomes effective at 7 a.m. on August 6, 2004, and terminates at 11:59 p.m. on September 6, 2004. If the need for this security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of the security zone and will announce that fact via Broadcast Notice to Mariners.

Dated: July 30, 2004.

**Gerald M. Swanson,**

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

[FR Doc. 04–18293 Filed 8–10–04; 8:45 am]

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

[COTP Charleston–04–100]

RIN 1625–AA87

**Security Zones; Charleston Harbor, Cooper River, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary fixed security zone in the waters from the Don Holt, I–526 Bridge, on the Cooper River to the entrance of Foster Creek on the Cooper River. This security zone is necessary to protect the public and ports from potential subversive acts during port embarkation operations. Vessels are prohibited from entering, transiting, anchoring, mooring, or loitering within this zone, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his or her designated representative.

**DATES:** This regulation is effective from 8 a.m. on July 23, 2004, until 8 a.m. on December 1, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket (COTP Charleston 04–100) and are available for inspection or copying at Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Matthew Meskun, Coast Guard Marine Safety Office Charleston, at (843) 720–3272.

**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 a NPRM. Publishing a NPRM would be contrary to public safety interests and national security. These regulations are needed to protect the public, the ports and waterways and the national security of the United States from potential subversive acts against vessels, port facilities and infrastructure during port embarkation operations. For the security concerns noted, it is in the public interest to have these regulations in effect without publishing a NPRM. Notifications will be made via marine information broadcasts to inform the

public about the existence of this security zone.

For the same reasons, 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**.

**Background and Purpose**

Based on the September 11, 2001, terrorist attack on the World Trade Center and Pentagon, there is an increased risk that vessels or persons in close proximity to the Port of Charleston, South Carolina, may engage in subversive or terrorist acts against military installations or operations occurring within the security zone. The security zone is necessary to protect the safety of life and property on navigable waters and prevent potential terrorist threats aimed at military installations during strategic embarkation operations. The temporary security zone will encompass all waters from the Don Holt I–526 Bridge over the Cooper River to the entrance of Foster Creek on the Cooper River.

**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).

The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port or his or her designated representative.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic effect 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

because the limited geographic area encompassed by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port of Charleston.

#### 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. If the rule will affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may also 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 requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implication 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. Although this rule will not result in such 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 relationships between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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. Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

#### 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; 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. 0170.1.

■ 2. A new temporary section 165.T-07-100 is added to read as follows:

#### § 165.T-07-100 Security Zone; Charleston Harbor, Cooper River, South Carolina.

(a) *Location.* The following is a security zone: All waters of the Cooper River, from surface to bottom and bank to bank, from the Don Holt I-526 Bridge to the intersection of Foster Creek.

(b) *Regulations.* (1) Vessels and persons are prohibited from entering, transiting, mooring, anchoring, or loitering within the security zone unless authorized by the Captain of the Port Charleston, South Carolina or his or her designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port via VHF-FM channel 16 or by telephone (843) 720-3240 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) *Effective Period.* This section is effective from 8 a.m. on July 23, 2004 until 8 a.m. on December 1, 2004.

Dated: July 23, 2004.

#### John E. Cameron,

Commander, U. S. Coast Guard, Captain of the Port, Charleston, South Carolina.

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