

Issued in Washington, DC, on this 9th day of September, 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04-002]

RIN 1625-AA87

Security Zones; Monterey Bay and Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the enforcement period of moving and fixed security zones extending 100 yards in the U.S. navigable waters around and under all cruise ships, tank vessels, and High Interest Vessels (HIVs) that enter, are moored or anchored in, or depart from the designated waters of Monterey Bay or Humboldt Bay, California. These security zones are needed for national security reasons to protect the public and ports of Monterey Bay and Humboldt Bay from potential subversive acts. 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 from 11:59:01 p.m. on September 5, 2004, to 11:59 p.m. on March 5, 2005.

ADDRESSES: Documents indicated in this preamble, as being available in the docket, are part of docket COTP San Francisco Bay 04-002 and are available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-2770.

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 because the threat to U.S. assets and the public currently exists and is ongoing. 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** because the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002).

Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the current threat of attack, MARAD 02-07 (October 10, 2002). As a result, a heightened level of security has been established around all cruise ships, tank vessels, and High Interest Vessels (HIVs) in Monterey Bay and Humboldt Bay, California. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to cruise ships, tank vessels, and HIVs located in Monterey Bay and Humboldt Bay. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

In addition to this temporary final rule (TFR), we will be publishing a notice of proposed rulemaking (NPRM) under docket COTP San Francisco Bay 04-003, in which we propose to make permanent these temporary security zones around cruise ships, tank vessels, and HIVs in Monterey Bay and Humboldt Bay. In the NPRM, we propose to amend 33 CFR 165.1183, which was added by the final rule (COTP San Francisco Bay 02-019) published in the **Federal Register** (67 FR 79854) on December 31, 2002, and later amended by final rule (COTP San Francisco Bay 03-002) published in the **Federal Register** (69 FR 8817) on February 26, 2004. Section 165.1183, "Security Zones; Cruise Ships, Tank Vessels, and High Interest Vessels, San Francisco Bay and Delta ports, California", established security zones

around cruise ships, tank vessels, and HIVs in the San Francisco Bay and Delta ports, but does not address security zones around these vessels when they are located in Monterey Bay and Humboldt Bay, California. This temporary rule will provide security in Monterey Bay and Humboldt Bay during a notice-and-comment rulemaking for a permanent rule, and § 165.1183 will remain in effect until amended by a future rule.

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 the conflict in 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.

The threat of maritime attacks is real as evidenced by the attack on the USS COLE and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. Ongoing foreign hostilities have made it prudent for U.S. ports and waterways 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 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 a cruise ship, tank vessel, or HIV would have on the public interest, the Coast Guard is extending the enforcement period for security zones around and under cruise ships, tank vessels, and HIVs entering, departing, moored or anchored within designated waters of Monterey Bay and Humboldt Bay, California. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these types of vessels. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a cruise ship, tank vessel, or HIV would have on the crew and passengers on board, and the surrounding area and communities, security zones are prudent for these types of vessels.

Discussion of Rule

On December 31, 2002, we published the final rule (COTP San Francisco Bay 02-019) adding § 165.1183, "Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California" in the **Federal Register** (67 FR 79854). That section set forth security zones for cruise ships and tank vessels in San Francisco Bay and delta ports. A subsequent final rule (COTP San Francisco Bay 03-002) published in the **Federal Register** (69 FR 8817) on February 26, 2004, amended section 165.1183 to include HIVs as protected vessels in that section, along with cruise ships and tank vessels.

On March 29, 2004, we published a temporary final rule (COTP San Francisco Bay 04-002) in the **Federal Register** (69 FR 16163) that established security zones around all cruise ships,

tank vessels, and HIVs that are anchored, moored or underway within designated waters of Monterey Bay and Humboldt Bay, California. In this temporary rule, the Coast Guard is extending the enforcement period of these security zones for an additional six months.

For Monterey Bay, a security zone is activated when any cruise ship, tank vessel, or HIV passes shoreward of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10' N, 122°01.60' W, and Cypress Point, Monterey to the south, in position 36°34.90' N, 121°58.70' W.

For Humboldt Bay, a security zone is activated when any cruise ship, tank vessel, or HIV enters an area within a 4 nautical mile radius line drawn west of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130), in position 40°46.25' N, 124°16.13' W, or enters waters within the Humboldt Bay Harbor.

The security zone remains in effect while the cruise ship, tank vessel, or HIV is underway, anchored or moored within the designated waters of Monterey Bay or Humboldt Bay. When activated, the security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of the vessel. This security zone is automatically deactivated when the vessel departs from the areas of Monterey Bay or Humboldt Bay designated in this rule. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. Section 165.33 of title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a security zone. Vessels or persons violating this section may 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 \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment from 5 to 10 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, will also face imprisonment from 10 to 25 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, imprisonment up to 10 years, and a civil penalty of not more than \$25,000 for each day of a continuing violation.

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).

Although this regulation restricts access to a portion of navigable waters, the effect of this regulation will not be significant because: (i) The zones encompass only a small portion of the waterway; (ii) 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 zones is the minimum necessary to provide adequate protection for all cruise ships, tank vessels, and HIVs, other vessels operating in the vicinity of these vessels, adjoining areas, and the public. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

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. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by these security zones. These security zones will not have a

significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic will be able to pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. 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 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 the rule will affect your small business, organization, or government jurisdiction 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

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.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be available in the docket where located 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. 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. Reinstate temporary § 165.T11–004, and revise paragraph (f) to read as follows:

§ 165.T11–004 Security Zones; Monterey Bay and Humboldt Bay, California.

(a) *Definitions.* As used in this section—

Cruise ship 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 ports of Monterey or Humboldt Bay.

High Interest Vessel or *HIV* means any vessel deemed by the Captain of the Port or higher authority as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

Tank vessel means any self-propelled tank ship that is constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

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

(1) *Monterey Bay*. All waters extending from the surface to the sea floor, within 100 yards of all cruise ships, tank vessels, and HIVs within the waters of Monterey Bay east of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10' N, 122°01.60' W, and Cypress Point, Monterey to the south, in position 36°34.90' N, 121°58.70' W.

(2) *Humboldt Bay*. All waters extending from the surface to the sea floor, within 100 yards of all cruise ships, tank vessels, and HIVs within the waters of Humboldt Bay and the waters of the Pacific Ocean within a 4 nautical mile radius of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130), in position 40°46.25' N, 124°16.13' W.

(c) *Regulations*. (1) In accordance with the general regulations in § 165.33 of this part, entry into these security zones is prohibited, unless doing so is specifically authorized by the 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.

(3) When a cruise ship, tank vessel, or HIV 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, tank vessel or HIV's security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

(d) *Authority*. The authority for this section includes 33 U.S.C. 1226, 1231; 50 U.S.C. 191, 195.

(e) *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. The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by local law enforcement as necessary.

(f) *Effective period*. This section is effective from 11:59 p.m. on March 5, 2004, to 11:59 p.m. on March 5, 2005.

Dated: August 31, 2004.

Gerald M. Swanson,

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

[FR Doc. 04-20717 Filed 9-14-04; 8:45 am]

BILLING CODE 4910-15-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095-AB10

Revision of NARA Research Room Procedures; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations, which were published in the **Federal Register** of Wednesday, June 30, 2004, (69 FR 39313). The regulations related to the revision of NARA research room procedures.

DATES: Effective on July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at (301) 837-1801.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction apply to the use of personal paper-to-paper copiers at the National Archives at College Park and affect the public.

Need for Correction

As published, the final regulations omitted the Office of Management and Budget (OMB) Control Number for the information collection described in § 1254.86(a).

List of Subjects in 36 CFR Part 1254

Archives and records, Micrographics.

■ Accordingly, 36 CFR part 1254 is corrected by making the following correcting amendment:

PART 1254—USING RECORDS AND DONATED HISTORICAL MATERIALS

■ 1. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101-2118.

■ 2. Add paragraph (h) to § 1254.86 to read as follows:

§ 1254.86 May I use a personal paper-to-paper copier at the National Archives at College Park?

* * * * *

(h) The collection of information contained in this section has been approved by the Office of Management and Budget with the control number 3095-0035.

Dated: September 10, 2004.

Nancy Y. Allard,

Federal Register Liaison.

[FR Doc. 04-20762 Filed 9-14-04; 8:45 am]

BILLING CODE 7515-01-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No. 2003-C-027]

RIN 0651-AB70

Revision of Patent Fees for Fiscal Year 2005; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office published in the **Federal Register** of August 27, 2004, a final rule revising certain patent fee amounts for fiscal year 2005. Inadvertently, an incorrect fee amount was stated for an appeal fee in section 41.20(b)(3). This notice corrects this appeal fee amount for fiscal year 2005.

DATES: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT:

Tamara McClure by e-mail at Tamara.McClure@uspto.gov, by