

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 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 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. 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; 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. A new temporary § 165.T07–153 is added to read as follows:

#### § 165.T07–153 Security Zone; Sea buoy at the entrance of St. Mary's River to Kings Bay, GA.

(a) *Regulated area.* The Coast Guard is establishing a temporary moving security zone around foreign naval submarines when they are within a regulated area 12 nautical miles offshore from the baseline, also known as the shoreline, at the mouth of the St. Mary's River to the Kings Bay Naval Submarine Base, Kings Bay, GA. The temporary security zone encompasses all waters within 500 yards in any direction around a foreign navy submarine transiting within the regulated area.

(b) *Definitions.* The following definitions apply to this section:

*Designated representatives* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Jacksonville, Florida, in the enforcement

of the regulated navigation areas and security zones.

*Minimum safe speed* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

- (1) On a plane;
- (2) In the process of coming up onto or coming off a plane; or
- (3) Creating an excessive wake.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, anchoring, mooring or transiting in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, FL or his designated representative. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed, must comply with all orders issued by the COTP or his designated representative, and must not proceed any closer than 100 yards, in any direction, to the submarine.

(d) *Dates.* This section is effective from 8 a.m. on November 10, 2005, until 12 midnight on December 1, 2005.

Dated: November 10, 2005.

**David L. Lersch,**

*Captain, U.S. Coast Guard, Captain of the Port Jacksonville.*

[FR Doc. 05–23097 Filed 11–21–05; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD11–05–002]

RIN 1625–AA11

#### Regulated Navigation Area; San Diego Bay, Mission Bay and Their Approaches, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) within San Diego Bay, Mission Bay, and their approaches out to the 12

nautical mile limit of the territorial sea. This action is necessary to provide the COTP a greater situational awareness of vessels intending to enter San Diego Bay or Mission Bay, to allow the COTP to enforce safety and security zones associated with naval vessel movements and exercises, and increase awareness of potential threats to national security assets within the area. This RNA will ensure the safe movement of vessels in the vicinity of San Diego Bay and Mission Bay.

**DATES:** This rule is effective December 22, 2005.

**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 CGD11 05-002 and are available for inspection or copying at USCG Sector San Diego between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR Andrew Cheney, Chief, Ports and Waterways Division, USCG Sector San Diego, telephone number 619-278-7261.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On July 15, 2005, we published a Notice of Proposed Rulemaking (NPRM) entitled, Regulated Navigation Area; San Diego Bay, Mission Bay and Their Approaches, California in the **Federal Register** (70 FR 40944). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

**Background and Purpose**

This rule is one of a number of measures to reduce potential terrorist threats to the Port of San Diego, California. San Diego is the homeport of numerous U.S. naval vessels and facilities. The RNA increases the safety and security of naval vessels and facilities, commercial vessels, and the public by improving enforcement of safety and security zones by providing greater situational awareness regarding vessel operations in the area.

In this rulemaking, the Coast Guard introduces a series of procedures to organize the flow and operation of vessels legitimately seeking to enter, leave or navigate within San Diego Bay or Mission Bay. These procedures apply to vessels of 100 GT or more, including tug and barge combinations of 100 GT or more (combined) intending to enter, leave or navigate within San Diego Bay or Mission Bay. These regulations do not apply to vessels engaged in innocent passage, force majeure or any other

entry allowed under principles of international law regardless of their presence in the RNA. Vessels operating Automatic Identification System (AIS) in accordance with the AIS carriage requirements of the Maritime Transportation Security Act of 2002 (MTSA) and the International Maritime Organization requirements adopted under International Convention for the Safety of Life at Sea, 1974, (SOLAS) as amended, are also exempt from this regulation. The procedures are as follows:

Vessels intending to cross the COLREGS Demarcation Line (denoted in 33 CFR 80.1104 or 80.1106) and enter San Diego Bay or Mission Bay as part of normal operations must obtain permission from the COTP or designated representative upon entering into the RNA established in 33 CFR 165.1122. Further, vessels of 100 GT or more that have already crossed the COLREGS Demarcation Line and entered San Diego or Mission Bay and intend to depart or move within the RNA must request permission from the COTP or designated representative. The Coast Guard recommends seeking permission 30 minutes prior to anticipated entry into the RNA or commencement of movement within the RNA to avoid delays.

Upon receiving permission from the COTP or designated representative, the vessel may enter, depart, or move within the RNA and proceed in accordance with directives provided by the COTP or designated representative.

Communication with the COTP may be made by telephone at (619) 278-7033 (select option 2) or via VHF-FM marine band radio on channel 16 (156.800 Mhz). Coast Guard Information regarding Port Security requirements in San Diego and Mission Bay will be conveyed via marine information broadcast on VHF-FM marine band radio, channel 22A (157.1 MHz).

**Discussion of Comments and Changes**

The Coast Guard received no comments on the proposed rule and has not changed the regulations from those proposed in the published NPRM.

**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).

This conclusion is based on the fact that this rule applies only to vessels of 100 GT or more, as described above, which are not using AIS and that intend on entering, departing, or moving within San Diego Bay or Mission Bay. This rule is not intended to infringe on internationally recognized principles such as innocent passage and force majeure. Further, because this rule is designed to manage the flow of qualified vessels, we do not anticipate significant delays in the movement of vessels through San Diego or Mission Bay.

**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 would not have a significant economic impact on a substantial number of small entities.

This rule will affect only the following entities, some of which may be small entities: owners and operators of commercial vessels of 100 GT or more intending to enter, depart, or move in San Diego Bay or Mission Bay. Because the number of small entities owning/operating commercial vessels of this size is not substantial and there is little anticipation of delay when requesting entry into San Diego Bay or Mission Bay the economic impact of this rule should be minimal.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization, or governmental jurisdiction is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LCDR Andrew Cheney, Chief, Ports and Waterways Division, USCG Sector San Diego, 619-278-7261.

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 would 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.

### 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 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 it establishes a Regulated Navigation Area.

A final "Environmental Analysis Check List" and final "Categorical Exclusion Determination" are 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, 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 § 165.1122 to read as follows:

#### § 165.1122 San Diego Bay, Mission Bay and their Approaches—Regulated navigation area.

(a) *Regulated navigation area.* The following area is a regulated navigation area (RNA): All waters of San Diego Bay, Mission Bay, and their approaches encompassed by a line commencing at Point La Jolla (32°51'06" N, 117°16'42" W); thence proceeding seaward on a line bearing 255° T to the outermost extent of the territorial seas; thence proceeding southerly along the outermost extent of the territorial seas to the intersection of the maritime boundary with Mexico; thence proceeding easterly, along the maritime boundary with Mexico to its intersection with the California coast; thence proceeding northerly, along the shoreline of the California coast—and including the inland waters of San Diego Bay and Mission Bay, California, shoreward of the COLREGS Demarcation Line—back to the point of origin. All coordinates reference 1983 North American Datum (NAD 83).

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

*COLREGS Demarcation Line* means the line described at 33 CFR 80.1104 or 80.1106.

*Public vessel* means a vessel that is owned or demise—(bareboat) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.

*Vessel* means every description of watercraft or other artificial contrivance

used, or capable of being used, as a means of transportation on water other than a public vessel.

(c) *Applicability.* This section applies to all vessels of 100 gross tons (GT) or more, including tug and barge combinations of 100 GT or more (combined), operating within the RNA, with the exception of public vessels, vessels not intending to cross the COLREGS Demarcation Line and enter San Diego Bay or Mission Bay, and any vessels exercising rights under principles of international law, including innocent passage or force majeure, within the area of this RNA. Vessels operating properly installed, operational, type approved automatic identification system (AIS) as denoted in 33 CFR 164.46 are exempted from making requests as required in this regulation.

(d) *Regulations.* (1) No vessel to which this rule applies may enter, depart or move within San Diego Bay or Mission Bay unless it complies with the following requirements:

(i) Obtain permission to enter San Diego Bay or Mission Bay from the Captain of the Port or designated representative immediately upon entering the RNA. However, to avoid potential delays, we recommend seeking permission 30 minutes prior to entering the RNA.

(ii) Follow all instructions issued by the Captain of the Port or designated representative.

(iii) Obtain permission for any departure from or movement within the RNA from the Captain of the Port or designated representative prior to getting underway.

(iv) Follow all instructions issued by the Captain of the Port or designated representative.

(v) Requests may be made by telephone at 619-278-7033 (select option 2) or via VHF-FM radiotelephone on channel 16 (156.800 Mhz). The call sign for radiotelephone requests to the Captain of the Port or designated representative is "Coast Guard Sector San Diego."

(2) For purposes of the requirements in paragraph (d)(1) of this section, the Captain of the Port or designated representative means any official designated by the Captain of the Port, including but not limited to commissioned, warrant, and petty officers of the U.S. Coast Guard, and any U.S. Coast Guard patrol vessel. 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.

(e) *Waivers.* The Captain of the Port or designated representative may, upon

request, waive any regulation in this section.

Dated: November 9, 2005.

**K.J. Eldridge,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 05-23030 Filed 11-21-05; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Parts 251, 261, and 291

**RIN 0596-AC35**

#### Recreation Fees

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule is making minor, purely technical changes to implement the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801-6814). The Federal Lands Recreation Enhancement Act repealed and supplanted section 4 of the Land and Water Conservation Fund Act (16 U.S.C. 460l-6a) as the authority for special recreation permits issued by federal land management agencies and for recreation fees charged by federal land management agencies, including the Forest Service. Consequently, in 36 CFR part 251, subpart B, the final rule is replacing the citation to section 4(c) of the Land and Water Conservation Fund Act for special recreation permits (16 U.S.C. 460l-6a(c)) with a citation to section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)). The final rule also is adding a definition for recreation fee and revising the prohibition for failure to pay recreation fees in 36 CFR part 261, subpart A, to conform with the Federal Lands Recreation Enhancement Act. In addition, the final rule is removing 36 CFR part 291 governing recreation fees authorized under section 4 of the Land and Water Conservation Fund Act. Because these changes are minor, purely technical, and nondiscretionary, the Department finds that good cause exists to exempt this rulemaking from public notice and comment under 5 U.S.C. 553(b)(B).

**DATES:** This rule is effective November 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Eberlien, Program Leader, Recreation and Heritage Resources Staff, (202) 205-1169.

**SUPPLEMENTARY INFORMATION:** The Federal Lands Recreation Enhancement

Act (REA) (16 U.S.C. 6801-6814) was enacted December 8, 2004. REA provides the sole authority for the Forest Service to issue and collect fees for special recreation permits for use and occupancy of National Forest System lands and to establish, modify, charge, and collect recreation fees on National Forest System lands. Section 813 of REA (16 U.S.C. 6812) repeals the agency's other authorities for issuing these permits and charging these fees, including section 4 of the Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. 460l-6a).

Forest Service regulations at 36 CFR part 251, subpart B, govern special use authorizations for use and occupancy of National Forest System lands. In the list of authorities for part 251, subpart B, the final rule is replacing the citation to section 4(c) of the LWCFA (16 U.S.C. 460l-6a(c)) with a citation to section 803(h) of REA (16 U.S.C. 6802(h)) for special recreation permits. In addition, in § 251.53(k), which enumerates the authority for special recreation permits, the final rule is replacing the citation to section 4(c) of the LWCFA with a citation to section 803(h) of REA.

The regulations at 36 CFR part 261, subpart A, establish prohibitions relating to acts or omissions relating to National Forest System lands. The final rule is adding a definition for recreation fee in § 261.2 to track the definition for that term in section 802(8) of REA (16 U.S.C. 6801(8)) to the extent it applies to the Forest Service and revising the prohibition for failure to pay recreation fees in § 261.15 to conform precisely to the enforcement provisions in section 812(d) of REA (16 U.S.C. 6811(d)).

The Department also is removing 36 CFR part 291 governing recreation fees authorized by section 4 of the LWCFA. The Department is not replacing part 291, because the Department believes that REA is sufficiently prescriptive that it does not require interpretation in a regulation. The Forest Service intends to issue directives that provide specific direction on implementation of REA.

#### Good Cause Statement

The Administrative Procedure Act (APA) exempts certain rulemaking from its public notice and comment requirements, including rulemaking involving "public property" (5 U.S.C. 553(a)(2)), such as Federal lands managed by the Forest Service. Furthermore, the APA allows agencies to promulgate rules without public notice and comment when an agency for good cause finds that public notice and comment are "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)).