

Dated: February 19, 2009.

**Fred M. Rosa, Jr.,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0752]

RIN 1625-AA87

#### Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard has established a security zone encompassing the navigable waters of the West Basin, Port Canaveral Harbor, Cape Canaveral, Florida. This security zone will be activated 4 hours prior to the scheduled arrival of a cruise ship at the West Basin. It is only enforceable during Maritime Security (MARSEC) Levels 2 and 3 or when there is a specific credible threat during MARSEC Level 1. This security zone will remain activated until the departure of all cruise ships from the West Basin.

**DATES:** This rule is effective May 8, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0752 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-0752 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Coast Guard Sector Jacksonville Prevention Department, 4200 Ocean Street, Atlantic Beach, Florida 32233, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Lieutenant Commander Mark Gibbs at

Coast Guard Sector Jacksonville Prevention Department, Florida. Contact telephone is (904) 564-7563. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On October 20, 2008, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, Florida in the *Federal Register* (73 FR 62235). We received three letters commenting on the rule. No public meeting was requested, and none was held.

##### Background and Purpose

The September 11, 2001, terrorist attacks on the World Trade Center complex in New York and the Pentagon in Arlington, Virginia, proved the devastating effects of subversive activity on U.S. critical infrastructure. Since that time, the Coast Guard has been taking action to ensure the security of maritime critical infrastructure and key resources throughout the country.

Subversive activity towards cruise ships and their associated passengers and crew is of paramount concern to the Coast Guard. Therefore, in order to strengthen security and further control access to the West Basin, the Captain of the Port Jacksonville has decided, after consultation with the Northeast and Eastern Central Florida Area Maritime Security Committee and in cooperation with the Canaveral Port Authority, to implement a security zone encompassing the West Basin. This security zone is only enforceable during MARSEC Levels 2 and 3 or when there is a specified credible threat during MARSEC Level 1.

As reflected in 33 CFR 101.105, MARSEC level means the level set to reflect the prevailing threat environment to the marine elements of the national transportation system, including ports, vessels, facilities, and critical assets and infrastructure located on or adjacent to waters subject to the jurisdiction of the U.S. The higher the level number, the greater the threat:

*MARSEC Level 1* means the level for which minimum appropriate protective security measures shall be maintained at all times.

*MARSEC Level 2* means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a transportation security incident.

*MARSEC Level 3* means the level for which further specific protective security measures shall be maintained for a limited period of

time when a transportation security incident is probable or imminent, although it may not be possible to identify the specific target.

As specified in 33 CFR 101.300, the Captain of the Port will communicate any changes in the MARSEC levels through a local Broadcast Notice to Mariners, an electronic means, if available, or as detailed in the Area Maritime Security Plan developed under 46 U.S.C. 70103(b).

##### Discussion of Comments and Changes

The Coast Guard received three comments in response to the NPRM. One comment was received from a private citizen; one comment was received from the Navigation Safety Advisory Council (NAVSAC); and one comment was received from the Florida Fish and Wildlife Conservation Commission (FWC).

The private citizen's comment addressed his displeasure of a security zone being used to protect cruise ships in the West Basin of Port Canaveral Harbor. The commenter felt that cruise ships should build private ports and not be permitted to dock in public waterways.

The Coast Guard took the individual's comments into consideration; however the need to protect cruise ships and their passengers and crew is of paramount concern to the Coast Guard. The Coast Guard feels the best way to address this concern is to establish this security zone. Since this zone will only be active during MARSEC 2 and 3 or when there is a specific credible threat during MARSEC 1, the Coast Guard has determined there will be minimal impact on all waterways users.

The comments from the NAVSAC and FWC addressed concerns pertaining to the rule's notification to the public when the security zone is activated. They are of the opinion that a red flag on a 50-foot pole located at the east end of Cruise Ship terminal 10 would not be an appropriate means of notifying the public. The NAVSAC and FWC are concerned that the red flag could be mistaken as the "divers down" flag or the "bravo" flag. They are also of the opinion that law enforcement officers will be reluctant to enforce the regulation against vessel operators who claim not to have understood the meaning of the red flag. They believe the use of a red flag will make it more difficult to prosecute violators of the security zone because it will be harder to prove the element of knowledge. They feel prosecutors will be less likely to accept these cases and judges will be more likely to dismiss the charges. The NAVSAC and FWC recommend that a regulatory mark be placed at the

entrance to the West Basin of Port Canaveral Harbor to notify the public when the security zone was activated.

The Coast Guard concurs with the NAVSAC and FWC's concerns over the use of a red flag, and will use a red ball which is consistent with other security zone regulations in the Port Canaveral area. A permanent regulatory mark would be impracticable due to the need to activate the zone quickly. To ensure boaters are given sufficient knowledge of the security zone, the Coast Guard will continuously broadcast the activations of the zone and law enforcement vessels will be on scene to inform boaters that the zone has been activated. Vessels encroaching on the security zone will be issued a Public Notice which clearly states the location of the security zone and the times it will be enforced. This will be the boater's first warning prior to enforcement action being taken.

#### **Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### **Regulatory Planning and Review**

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) because this security zone would only be activated 4 hours prior to the scheduled arrival of a cruise ship at the West Basin. It is only enforceable during MARSEC Levels 2 and 3 or when there is a specific credible threat during MARSEC Level 1. Once activated, this security zone would remain activated until the departure of all cruise ships from the West Basin or when the Captain of the Port Jacksonville (COTP) determines there is a specific credible threat during MARSEC Level 1. This security zone would be wholly confined within the existing West Basin and would not impede traffic transiting from the Banana River to the Atlantic Ocean.

#### **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. This security zone will be activated 4 hours prior to the scheduled arrival of a cruise ship at the West Basin. It is only enforceable during MARSEC Levels 2 and 3 or when there is a specific credible threat during MARSEC Level 1. Once activated, this security zone will remain activated until the departure of all cruise ships from the West Basin. This security zone will be wholly confined within the existing West Basin and will not impede traffic transiting from the Banana River to the Atlantic Ocean.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM 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.

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

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction 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)(f), of the Instruction, from further environmental documentation.

An environmental analysis checklist and a 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, 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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 § 165.777 to read as follows:

#### § 165.777 Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, Florida.

(a) *Regulated area.* The following area is a security zone: All waters of the West Basin of Port Canaveral Harbor northwest of an imaginary line between two points: 28°24'57.88" N, 080°37'25.69" W to 28°24'37.48" N, 080°37'34.03" W.

(b) *Requirement.* (1) This security zone will be activated 4 hours prior to the scheduled arrival of a cruise ship at

the West Basin of Port Canaveral Harbor during MARSEC Levels 2 and 3 or when the COTP determines there is a specified credible threat during MARSEC Level 1. This security zone will not be deactivated until the departure of all cruise ships from the West Basin. The zone is subject to enforcement when it is activated.

(2) Under general security zone regulations of 33 CFR 165.33, no vessel or person may enter or navigate within the regulated area unless specifically authorized by the COTP or the COTP's designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any direction given by the COTP or a designated representative and leave the security zone immediately if so ordered.

(3) The public will be notified when the security zone is activated by the display of a red ball on a 50-foot pole located at the east end of Cruise Ship terminal 10. This red ball will be lowered when the security zone is deactivated. To ensure boaters are given sufficient knowledge of the security zone, the Coast Guard will continuously broadcast the activations of the zone and law enforcement vessels will be on scene to inform boaters that the zone has been activated. Vessels encroaching on the security zone will be issued a Public Notice which clearly states the location of the security zone and the times it will be enforced. This will be the boater's first warning prior to enforcement action being taken.

(c) *Definitions.* The following definition applies to this section:

*Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local law enforcement officers designated by or assisting the COTP in the enforcement of the security zone.

(d) *Captain of the Port Contact Information.* If you have questions about this regulation, please contact the Sector Command Center at (904) 564–7513.

(e) *Enforcement periods.* This section will only be subject to enforcement when the security zone described in paragraph (a) is activated as specified in paragraph (b)(1) of this section.

Dated: March 26, 2009.

**Paul F. Thomas,**

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

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[FRL–8760–9]

#### Approval and Promulgation of Air Quality Implementation Plans; Kansas; Update to Materials Incorporated by Reference

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by Kansas that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

**DATES:** *Effective Date:* This action is effective April 8, 2009.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, or at <http://www.epa.gov/region07/programs/artd/air/rules/fedapprv.htm>; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation Docket at (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Evelyn VanGoethem at (913) 551–7659, or by e-mail at [vangoethem.evelyn@epa.gov](mailto:vangoethem.evelyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the state revises as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions