

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:** Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a security zone encompassing the navigable waters of the West Basin, Port Canaveral Harbor, Cape Canaveral, Florida. This security zone would 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 would remain activated until the departure of all cruise ships from the West Basin.

DATES: Comments and related material must reach the Coast Guard on or before December 19, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-0752 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) *Fax:* 202-493-2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Commander Mark Gibbs at Coast Guard Sector Jacksonville Prevention Department. Contact telephone is 904-564-7563. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0752), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2008-0752) in the Search Documents box, and click "Go >>." You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Coast Guard Sector Jacksonville Prevention Department, 4200 Ocean St., Atlantic Beach, FL 32233-2416 between 7:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

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, Maritime Security (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 Proposed Rule

The security zone area includes all waters of the West Basin, Port Canaveral Harbor, Cape Canaveral, FL 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. When the security zone is activated, and thus subject to enforcement, entry is prohibited unless specifically authorized by the Captain of the Port Jacksonville or his designated representative.

This security zone would be activated 4 hours before the scheduled arrival of a cruise ship at the West Basin. It is only enforceable during MARSEC Levels 2 and 3 or when the COTP determines there is a specific credible threat during MARSEC Level 1. This security zone would remain activated until the departure of all cruise ships from the West Basin or when the credible threat no longer exists. The restriction of vessel movements within this security zone is intended to prohibit the movement of all vessels not operated by a local, State, or Federal law enforcement organization unless specifically authorized by the Captain of the Port, or his designated representative. The public would be notified when the security zone is activated by the display of a red flag on a 50-foot pole located at the east end of Cruise Ship terminal 10 that is visible from all approaches to the zone.

Regulatory Analyses

We developed this proposed 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 proposed 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 a significant action because this security zone would 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 not 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 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 proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This security zone would 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. 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.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule so that

they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Mark Gibbs at Coast Guard Sector Jacksonville Prevention Department. Contact telephone is 904–564–7563. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed 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 proposed 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 made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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 proposes to amend 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; 33 CFR 1.05–1, 6.04–1, 6.04–6, 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 Captain of the Port Jacksonville (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 flag on a 50-foot pole located at the east end of Cruise Ship terminal 10. This red flag will be lowered when the security zone is deactivated.

(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: September 29, 2008.

Paul F. Thomas,

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

[FR Doc. E8–24808 Filed 10–17–08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2117; MB Docket No. 08–194; RM–11488]

Television Broadcasting Services; Huntsville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Local TV Alabama License, LLC ("Local TV"), the licensee of station WHNT–DT, DTV channel 19, Huntsville, Alabama. Local TV requests the substitution of DTV channel 46 for channel 19 at Huntsville.

DATES: Comments must be filed on or before November 19, 2008, and reply comments on or before December 4, 2008.