

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 in the enforcement of regulated navigation areas, safety zones, and security zones.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville or his designated representative.

(d) *Notice of a Safety Zone.* The proposed safety zones are temporary in nature and will only be enacted and enforced prior to, and just after a successful launch. The COTP will inform the public of the existence or status of the safety zone(s) by Broadcast Notice to Mariners on VHF-FM channel 16, Public Notice, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline at approximately 28°35'00" N, 080°34'36" W, and from a 90-foot pole near the shoreline at approximately 28°25'18" N, 080°35'00" W. Coast Guard assets or other Federal, State, or local law enforcement assets will be clearly identified by lights, markings, or with agency insignia.

(e) *Contact Information.* The COTP Jacksonville may be reached by telephone at (904) 564-7513. Any on-scene Coast Guard or designated representative assets may be reached on VHF-FM channel 16.

Dated: November 26, 2008.

**Paul F. Thomas,**

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

**Editorial Note:** This document was received in the Office of the Federal Register on Friday, March 27, 2009.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1272]

RIN 1625-AA00

#### Safety Zone; Underwater Object, Massachusetts Bay, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is extending the duration of a temporary safety zone

surrounding the fishing vessel PATRIOT located approximately 17 miles northeast of Scituate, Massachusetts in Massachusetts Bay. This action is necessary to ensure that vessels are not endangered by conducting dredging, diving, salvage, anchoring, fishing or other activities in this area. This temporary rulemaking is needed to protect the environment, the commercial fishing industry, and the general public from potential hazards associated with the underwater object.

**DATES:** This rule is effective from 11:59 p.m. March 14, 2009 through 11 p.m. April 28, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-1272 and will be available online at [www.regulations.gov](http://www.regulations.gov). They will also be available for inspection or copying in 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 United States Coast Guard Sector Boston, 427 Commercial St, Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Chief Eldridge McFadden, Waterways Management Division, at 617-223-3000. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because initial immediate action was needed to protect the public from the hazards posed by an unknown underwater object located in Massachusetts Bay. This object was later identified as the F/V Patriot. The F/V PATRIOT is located in approximately 95 feet of water 17 miles northeast of Scituate, Massachusetts. This rule extends the duration of the existing safety zone, which would have expired on March 14, 2009, to ensure, to the extent practicable, the immediate, continued protections for the environment, the commercial fishing industry, and the general public from the hazards associated with the F/V

PATRIOT, while investigative efforts continue, risk mitigation strategies are further explored and implemented, and salvage efforts are conducted.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

#### Background and Purpose

On January 3, 2009, the F/V PATRIOT, a 54-foot steel-hull boat, sank with the loss of two crewmembers onboard. The vessel was reported to have an estimated 5000 gallons of fuel onboard. There were no survivors and the exact position of the vessel was not immediately known. On January 8, 2009, the Coast Guard established a temporary safety zone around a reported underwater object believed to be the F/V PATRIOT, located in Massachusetts Bay approximately 17 miles northeast of Scituate, Massachusetts, in position 42°24'27.34" N, 70°27'17.23" W.

This underwater object created an immediate and significant danger to the environment, the commercial fishing industry, and the general maritime public, as mariners unaware of its presence could make contact with the object and cause damage to their vessel, equipment below the water or fishing gear. On January 14, 2009, the Coast Guard extended the temporary safety zone until March 14, 2009, while investigative efforts continued and risk mitigation strategies were further explored. On January 23, 2009, underwater exploratory operations with photographic equipment confirmed that the object was the F/V PATRIOT. The owners of the vessel intend to conduct dive and salvage operations on the vessel. The extension of this zone will help ensure the planned dive and salvage operations can be conducted safely.

#### Discussion of Rule

This regulation extends the duration of the temporary safety zone on the navigable waters of Massachusetts Bay, Massachusetts, 17 miles northeast of Scituate, Massachusetts. This extension is necessary to allow the owners of the F/V PATRIOT to conduct salvage operations. The first safety zone, on this matter, was effective from January 8, through January 14, 2009. On January 14, 2009, the duration of the zone was extended until March 14, 2009 (74 FR 7817). With this rule, we are extending the duration of the safety zone from March 14, 2009 through April 28, 2009. The zone extends for 500 yards, in all directions, from the F/V PATRIOT in approximate position 42°24'27.34" N,

70°27'17.23" W. The position of the safety zone has been modified slightly from the prior safety zones so as to better identify its location.

This action is intended to prohibit vessels and persons from entering, transiting, anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston, Massachusetts. Public notifications about this safety zone have been and will continue to be made through broadcast and local notice to mariners. Marine traffic may transit safely in surrounding areas of Massachusetts Bay, but are restricted from entering the area delineated above.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to the limited area and duration covered by this safety zone.

### 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.

We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public. This impact, however, is outweighed by the safety risks mitigated by the enactment of this zone. Further, the safety zone extends only 500 yards in all directions of the fishing vessel PATRIOT, and as such mariners will be able to transit around the zone without incurring additional costs.

### 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 rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, anchor, or fish in a portion of the Massachusetts Bay covered by the safety zone. This rule will not have a significant impact on a substantial number of small entities for the following reasons: The area this rule is affecting is very small and there is plenty of water in the area for vessels to transit around.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 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 affect 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 0023.1 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation as the rule pertains to a temporary safety zone established and extended to address an emergency situation lasting more than one week. The written environmental analysis checklist and Categorical Exclusion Determination prepared for the initial effective period of this safety zone regulation is applicable to this extension. These documents 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise temporary § 165.T01–1272, to read as follows:

#### § 165.T01–1272 Safety Zone: Underwater Object, Massachusetts Bay, MA.

(a) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, of Massachusetts Bay within a 500 yard radius of underwater object, in approximate position 42°24'27.34" N, 70°27'17.23" W.

(b) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port Boston.

(c) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering the safety zone without permission from the Captain of the Port Boston. In addition, all vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port Boston or designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons desiring to enter the safety zone may request permission from the Captain of the Port Boston via VHF Channel 16 or via telephone at (617) 223–3201.

(d) *Enforcement Period.* This rule will be enforced from 11 p.m. January 8, 2009, until 11 p.m. April 28, 2009.

Dated: March 6, 2009.

**G.P. Kulisch,**

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

[FR Doc. E9–7260 Filed 3–31–09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2008–0509; FRL–8788–8]

### Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the New Mexico Albuquerque/Bernalillo County State Implementation Plan (SIP). This revision replaces Regulation 8, Airborne Particulate Matter, with New Mexico Administrative Code (NMAC), 20.11.20, Fugitive Dust Control. This rulemaking action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on June 1, 2009 without further notice, unless EPA receives adverse comment by May 1, 2009. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0509, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

- *Hand Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R06–OAR–2008–0509. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless