

that, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

Dated: January 15, 2003.

J.R. Whitehead,

*Captain, U.S. Coast Guard, Acting
Commander, 8th Coast Guard District.*

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville 02-066]

RIN 2115-AA97

Security Zones; Ports of Jacksonville, Fernandina, and Canaveral, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones around certain vessels within the ports of Jacksonville, Fernandina, and Canaveral. The security zones will prohibit entry into or movement within 100 yards of all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the ports of Jacksonville and Canaveral. These security zones are needed to ensure public safety and prevent sabotage or terrorist acts against vessels in the COTP Jacksonville area of responsibility. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Jacksonville, Florida or his designated representative.

DATES: This rule is effective February 24, 2003.

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 [COTP Jacksonville 02-066] and are available for inspection or copying at Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

LTJG Drew Casey, Coast Guard Marine Safety Office Jacksonville, at (904) 232-3610.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 12, 2001, one day after the September 11 terrorist attacks, the

Coast Guard Captain of the Port in Jacksonville established a temporary rule establishing security zones around tank vessels, passenger vessels, and military pre-positioned ships until October 3, 2001 (published on September 26, 2001, 66 FR 49104). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. As a result, on October 17, 2001, the Coast Guard published a second temporary rule in the **Federal Register** continuing these zones through 11:59 p.m. June 15, 2002 (66 FR 52689). The third temporary rule continued the zones through noon on November 15, 2002 (67 FR 41339). A fourth temporary rule continued the zones until January 30, 2003 so the Coast Guard can give adequate consideration to the comments received from the notice of proposed rulemaking (67 FR 55184).

On August 28, 2002 we published a notice of proposed rulemaking in the **Federal Register** entitled "Security Zones; Ports of Jacksonville, Canaveral, and Fernandina, FL" (67 FR 55184). We received one comment on the proposed rule, which is discussed below.

Background and Purpose

This rule creates 100-yard security zones around all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the Ports of Jacksonville, Fernandina, and Canaveral. No person or vessel may enter these zones without the permission of the Captain of the Port of Jacksonville. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30 deg. 23' 35" N, 81 deg. 19' 08" W, when entering the Port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28 deg. 22.7' N, 80 deg. 31.8', and 28 deg. 23.7' N, 80 deg. 29.2' W, when entering Port Canaveral or passes St. Mary's River Sea Buoy, at approximate position 30 deg. 40.8" N, 81 deg 11.8" W, when entering the Port of Fernandina. Fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville, Fernandina, and Canaveral, Florida.

Discussion of Comments and Changes

We received one comment on the proposed rule from the Florida Department of Transportation (FDOT), Seaport Office. FDOT expressed concern that the regulation, if implemented, would not provide security for sensitive

land-based resources, such as waterfront storage tanks and petroleum facilities. FDOT's concern for shore-based resources is shared by the Coast Guard and is being addressed at the national level through separate security measures. See *Maritime Security*, 67 FR 79742 (Dec. 30, 2002) (Notice of public meetings on Coast Guard national maritime security measures, including in Jacksonville, FL, on Feb. 7, 2003.)

A second concern from FDOT was that the NPRM did not prove that such a zone would prevent sabotage or terrorist acts. The Coast Guard has concluded that this rule is a necessary measure to protect certain high-risk vessels on the navigable waterways of the United States. The 100-yard security zones, although not guaranteed to eliminate all risk of sabotage or terrorist acts, will significantly reduce vulnerability and provide an enforcement mechanism if a violation occurs.

The third and final concern expressed by FDOT was that this rule would cause disruption to the movement of people and goods. First, this rule has been in place since September 2001 in the Jacksonville area and has not caused any noticeable disruption to maritime trade and transportation. Secondly, the Captain of the Port has discretion to allow a vessel to transit a security zone, if deemed necessary, to promote safe and efficient marine transportation. The environment in which the maritime industry operates has dramatically changed since September 2001. The Coast Guard believes these types of security zones, which only extend 100 yards around certain vessels, create the appropriate balance between efficient maritime transportation and necessary security in our new environment.

No changes were made to the proposed rule as a result of the comment received.

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 Transportation (DOT) (44 FR 11040; February 26, 1979) because the impact of this rule on commercial and recreational vessel navigation is minimal because most vessels will be able to transit around these zone and the Captain of the Port

may permit entry into the zone on a case by case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. “Small entities” include 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 because small entities may be allowed to enter on a case-by-case basis with the authorization of the Captain of the Port.

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. 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 requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication 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. Although 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.

Environment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

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 concern 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 relationships 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 Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A section 165.759 is added to read as follows:

§ 165.759 Security Zones; Ports of Jacksonville, Fernandina, and Canaveral, Florida.

(a) *Regulated area.* Moving security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships during transits entering or departing the ports of Jacksonville, Fernandina, and Canaveral, Florida. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30 deg. 23’ 35” N, 81 deg. 19’ 08” West, when entering the port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28 deg. 22.7 N, 80 deg. 31.8 W, and 28 deg. 23.7 N, 80 deg. 29.2 W, when entering Port Canaveral. Fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville, Fernandina, and Canaveral, Florida.

(b) *Regulations.* In accordance with the general regulations § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by

Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Definition.* As used in this section: cruise ship means a passenger vessel, except for a ferry, greater than 100 feet in length that is authorized to carry more than 12 passengers for hire.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: January 3, 2003.

M.M. Rosecrans,

Captain, Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 03-1485 Filed 1-22-03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 02-115]

RIN 2115-AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones throughout the Captain of the Port of Miami's area of responsibility. The security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: This rule is effective February 16, 2003.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Miami 02-115] and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jennifer Sadowski, Waterways Management Division Officer, Coast Guard Marine Safety Office Miami, at (305) 535-8750.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 5, 2002, we published a notice of proposed rule making (NPRM) entitled "Security Zones; Port of Palm Beach, Palm Beach FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL" in the **Federal Register** (67 FR 67342). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly around those vessels and facilities which are frequented by foreign nationals and maintain an interest to national security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sep. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sep. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations)). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorist attacks are likely. The Captain of the Port (COTP) of Miami has determined that there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida. These security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

The Coast Guard Captain of the Port of Miami established temporary security zones in these areas following the September 11, 2001 attacks. Those temporary rules are as follows:

On September 11, 2001, the COTP issued a temporary final rule (TFR) (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01-093) establishing 100-yard security zones

around certain vessels in the Port of Palm Beach, Miami, Port Everglades, and Key West, FL, that expired September 25, 2001. On September 25, 2001, the COTP issued another TFR (67 FR 1101, January 9, 2002, COTP Miami 01-115) that maintained these 100-yard security zones around certain vessels in the Ports of Palm Beach, Miami, Port Everglades, and Key West, FL, and added a reference to specific points (buoys) where moving zones were activated and deactivated. This second TFR expired on June 15, 2002.

On October 7, 2001, the COTP issued a TFR (67 FR 6652, February 13, 2002, COTP Miami 01-116) establishing fixed security zones in Port Everglades and Miami, FL, that expired June 15, 2002.

On October 11, 2001, the COTP issued a TFR (67 FR 4177, January 29, 2002, COTP Miami 01-122) establishing a fixed-security zone for Port Everglades, FL, that expired June 15, 2002.

All of the above security zones were extended by a TFR issued on June 13, 2002 (67 FR 46389, COTP Miami-02-054) until December 15, 2002. That temporary final rule requested comments. As of December 12, 2002, the Coast Guard has not received any comments on that TFR.

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 **Federal Register** publication. Delay in the effective date of this regulation would be contrary to public interest. The assets protected by these security zones present possible targets of terrorist attack due to their potential for large personnel casualties if struck by a terrorist attack. Making this rule effective less than 30 days after **Federal Register** publication is necessary to prevent a lapse between this rule and the temporary regulations currently in place, which would leave persons at these assets, and the public and surrounding communities, vulnerable to sabotage or other subversive acts, accidents, or other events of a similar nature.

Discussion of Comments and Changes

The Coast Guard received one comment on the proposed rule consisting of two points. The comment stated that the security zone will bankrupt his business as a mobile vendor on the Mallory Docks in Key West and the security zone interferes with his ability to recreationally dive in the harbor. Landside restricted areas are established by local police as opposed to the United States Coast Guard and therefore, this security zone does not affect any land based mobile vendor businesses. The security zones around