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By direction of the Commission.

**Linda Mitry,**

*Deputy Secretary.*

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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, California

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to create 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 proposed RNA is necessary to provide the COTP a greater situational awareness of vessels intending to enter San Diego Bay or Mission Bay, 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:** Comments and related material must reach the Coast Guard on or before August 15, 2005.

**ADDRESSES:** You may mail comments and related material to USCG Sector San Diego, 2716 North Harbor Drive, San Diego, CA 92101. Coast Guard Sector San Diego maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be 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:** Chief, Ports and Waterways Division, USCG Sector San Diego, telephone number 619-638-6495.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD11 05-002), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 by 11 inches, suitable for copying. If you would like to know that your submission reached us, 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.

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to USCG Sector San Diego 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 separate notice in the **Federal Register**.

#### **Background and Purpose**

This rule is one of a number of measures proposed 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 proposed RNA would increase 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.

#### **Discussion of Proposed Rule**

In this NPRM, the Coast Guard proposes 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 would 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. The proposed 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 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 proposed procedures are as follows.

Vessels intending to cross the COLREGS Demarcation Line (denoted 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 proposed RNA. 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 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 by marine information broadcast on VHF-FM marine band radio, channel 22A (157.1 MHz).

### Regulatory Evaluation

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 "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This proposed rule would apply only to those vessels of 100 GT or more, as described above and not using AIS, that intend on entering, departing or moving within San Diego Bay or Mission Bay and is not intended to infringe on internationally recognized principles such as innocent passage and force majeure. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

### 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 proposed 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.

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 Chief, Ports and Waterways Division, USCG Sector San Diego, 619-683-6495.

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 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 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 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 made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

### 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 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, 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 Sections 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 AIS as denoted in 33 CFR 164.46 are exempted from making requests as required from this regulation.

(d) *Regulations.* (1) *Port Security Requirements.* 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) Reports 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 port security 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.* (1) The Captain of the Port or designated representative may, upon request, waive any regulation in this section.

Dated: June 16, 2005.

**K.J. Eldridge,**

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

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[RME No. R03–OAR–2004–MD–0010; FRL–7939–3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Metropolitan Washington D.C. 1-Hour Ozone Attainment Plan, Rescinding of Earlier Rules Resulting in Removal of Sanctions and Federal Implementation Clocks

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