

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG-2007-29153]

RIN 1625-AA87

**Security Zone; Hawaii Super Ferry Arrival/Departure, Nawiliwili Harbor, Kauai, HI****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard has created a security zone in the waters of Nawiliwili Harbor, Kauai, and on the land of the jetty south of Nawiliwili Park, including Waapa Road. This zone is intended to enable the Coast Guard and its law enforcement partners to better protect people, vessels, and facilities in and around Nawiliwili Harbor in the face of non-compliant protesters who have impeded passage of the Hawaii Super Ferry to its dock in the harbor. This rule complements, but does not replace or supersede, existing regulations that establish a moving 100-yard security zone around large passenger vessels like the Hawaii Super Ferry.

**DATES:** This rule is effective from September 1, 2007, through October 31, 2007. Comments and related material must reach the Coast Guard on or before September 26, 2007.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2007-29153 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

- (1) *Web site:* <http://dms.dot.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.
- (3) *Fax:* 202-493-2251.
- (4) *Delivery:* Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(5) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) Laura Springer, U.S. Coast Guard Sector Honolulu at (808) 842-2600.

**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 an NPRM. Though operation of the Hawaii Super Ferry from Oahu to Kauai has been voluntarily suspended by the operating company, operations could resume at any time. Delay in implementing this rule would expose protesters in the water and ashore, and ferry passengers and crew to undue hazards due to protesters' tactics of entering the water from land and waterfront facilities adjacent to the harbor and using themselves as human barriers to the Hawaii Super Ferry's movement into Nawiliwili Harbor. For the same reason, under 5 U.S.C. 533(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**. Although the Coast Guard has good cause to issue this effective temporary rule without first publishing a proposed rule, you are invited to submit comments and related material regarding this rule on or before September 26, 2007. We may change the temporary final rule based upon your comments.

All comments received will be posted, without change, to <http://dms.dot.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

**Background and Purpose**

On August 26 and 27, 2007, protesters impeded the passage of the Super Ferry Hawaii Super Ferry into and through Nawiliwili Harbor by entering the water from the land and waterfront facilities adjacent to the harbor, often with kayaks, surfboards, and other small vessels, and then swimming into and blocking the harbor's navigable channel. In addition, several hundred onlookers watched the unfolding events from land adjacent to the harbor. Most of these observers were on the jetty that is south of Nawiliwili Park, which is adjacent to the Madsen shipping facility in Nawiliwili Harbor (hereinafter referred to as "Nawiliwili Jetty"). Some of these onlookers threw rocks and bottles at Coast Guard personnel who were conveying detained protesters to shore on August 26. Most of the protesters

who entered the water were observed doing so from Nawiliwili Jetty.

The transit of the entrance into Nawiliwili harbor is difficult for large vessels in all but calm weather. The turn around the outer breakwater, then immediately turning in the opposite direction around the inner jetty is made more difficult by the combined effects of the winds and seas. Due to the difficulty of maneuvering in the small area of Nawiliwili, and in the interest of ensuring the safety of the protesters, the Hawaii Super Ferry's master chose not to enter the channel until the Coast Guard had cleared the channel of protesters. However, because the vessel remained outside the harbor, and because the protesters did not approach to within 100 yards of the vessel, the existing security zone (see 33 CFR 165.1410) did not provide the Coast Guard with the authority to control protestor entry into Nawiliwili Harbor or clear the channel of protesters before the Hawaii Super Ferry commenced its transit into the harbor. The resulting situation substantially complicated an already difficult transit and created a substantial risk of damage and injury.

The purpose of this regulation is several-fold. First, by designating most of the waters of Nawiliwili Harbor as a security zone upon the occurrence of triggering events discussed later, the regulation provides the Coast Guard and its law enforcement partners the authority to prevent persons and vessels from endangering themselves and the Hawaii Super Ferry's passengers and crew by attempting to impede the vessel's passage after it commences the difficult transit into the harbor. Extending the security zone to Nawiliwili Jetty and its access road provides law enforcement personnel with the authority necessary to control access into the water so the Hawaii Super Ferry may enter and depart the harbor safely and unimpeded by protesters. Additionally, in the case of mass protests, the security zone makes land adjacent to the harbor available for law enforcement purposes, such as an incident command post and a processing point for detained protesters.

**Discussion of the Rule**

This rule creates a security zone in most of the waters of Nawiliwili Harbor, and on Nawiliwili Jetty in Nawiliwili Harbor. The security zone will be activated for enforcement 60 minutes before the Hawaii Super Ferry's arrival into the zone, and will remain activated for 10 minutes after the Hawaii Super Ferry's departure from the zone. The activation of the zone for enforcement will be announced by marine

information broadcast and by a red flag, illuminated after sunset, displayed from the Pier One and the Harbor Facility Entrance on Jetty Road. During its period of activation and enforcement, entry into the land and water areas of the security zone is prohibited without the permission of the Captain of the Port, Honolulu, or his designated representative.

#### 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.

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation is unnecessary. This expectation is based on the short activation and enforcement duration of the security zone created by this temporary rule, as well as the limited geographic area affected the security zone.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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. While we are aware that affected areas have small commercial entities, including canoe and boating clubs and small commercial businesses that provide recreational services, we anticipate that there will be little or no impact to these small entities due to the narrowly tailored scope of these changes, and to the fact that such entities can request permission from the Captain of the Port to enter the security zone when it is activated.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) Laura Springer, U.S. Coast Guard Sector Honolulu, (808) 842–2600. 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 temporary 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 temporary rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

## Environment

We have analyzed this temporary rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this temporary rule is categorically excluded from further environmental documentation because this rule creates a security zone. An “Environmental Analysis Check List” and “Categorical Exclusion Determination” are available in the docket where indicated under ADDRESSES.

### List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

■ For the reasons set out 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; 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.  
\* \* \* \* \*

■ 1. Add temporary § 165.T14–160 to read as follows:

#### § 165.T14–160 Security Zone; Nawiliwili Harbor, Kauai, HI.

(a) *Location.* The following land areas, and water areas from the surface of the water to the ocean floor, is a security zone that is activated as described in paragraph (b) of this section, and enforced subject to the provisions of paragraph (c) of this section: All waters of Nawiliwili Harbor, Kauai, shoreward of the Nawiliwili Harbor COLREGS DEMARCATION LINE (See 33 CFR 80.1450), excluding the waters west of a line running from the southeastern most point of the breakwater of Nawiliwili Small Boat Harbor due south to the south shore of the harbor, and excluding the waters from Kalapaki Beach south to a line extending from the western most point of Kukii Point due west to the Harbor Jetty. The land of the Jetty south of Nawiliwili Park including

Waapa Road is included within the security zone.

(b) *Activation.* The zone described in paragraph (a) of this section will be activated for enforcement 60 minutes before the Hawaii Super Ferry’s arrival into the zone and remain activated for 10 minutes after the Hawaii Super Ferry’s departure from the zone. The activation of the zone for enforcement will be announced by marine information broadcast, and by a red flag, illuminated between sunset and sunrise, displayed from the Pier One and the Harbor Facility Entrance on Jetty Road.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry by persons or vessels into the security zones created by this section and activated as described in paragraph (b) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. Operation of any type of vessel, including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, within the security zone is prohibited. Under authority of 50 U.S.C. 192, if a vessel is found to be operating within the security zone without permission of the Captain of the Port, Honolulu, and refuses to leave, the vessel is subject to seizure and forfeiture.

(2) All persons and vessels permitted in the security zone must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard and other persons permitted by law to enforce this regulation. Upon being hailed by an authorized vessel or law enforcement officer using siren, radio, flashing light, loudhailer, voice command, or other means, the operator of a vessel must proceed as directed.

(3) If authorized passage through the security zone, a vessel must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. While underway with permission of the Captain of the Port or his or her designated representatives, no person or vessel is allowed within 100 yards of the Hawaii Super Ferry when it is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(4) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained

by draft to remain within the security zone in order to ensure navigational safety.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other person permitted by law, may enforce the regulations in this section.

Dated: August 31, 2007.

**Sally Brice-O’Hara,**

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

[FR Doc. 07–4357 Filed 8–31–07; 2:16 pm]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2005–NM–0006; FRL–8463–3]

### Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Prevention of Significant Deterioration and New Source Review

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the New Mexico State Implementation Plan (SIP) that were submitted to EPA on April 11, 2002, and December 29, 2005. The revisions modify New Mexico’s Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations in the SIP to address changes to the Federal PSD and NNSR regulations which were promulgated by EPA on December 31, 2002 and reconsidered with minor changes on November 7, 2003 (collectively, these two Federal actions are called the “2002 New Source Review (NSR) Reform Rules”). The revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PALs), and recordkeeping and reporting requirements. EPA is approving these revisions pursuant to section 110, part C, and part D of the Federal Clean Air Act (Act).

**DATES:** This rule is effective on October 5, 2007.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA–R06–OAR–2005–NM–0006. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly