

environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–1113 to read as follows:

##### § 100.35–T05–1113 **Special Local Regulations for Marine Events; Potomac River, Charles County, MD.**

(a) *Regulated area.* The following location is a regulated area: All waters of the Potomac River, within lines connecting the following positions: from latitude 38°22′05″ N, longitude 076°59′03″ W, thence to latitude 38°21′50″ N, longitude 077°00′54″ W, and from latitude 38°21′29″ N, longitude 077°00′54″ W to latitude 38°21′45″ N, longitude 076°58′59″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person

in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 7 a.m. until 12:30 p.m. on May 22, 2011.

Dated: February 28, 2011.

**Mark P. O'Malley,**

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

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**BILLING CODE 9110–04–P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 165

[Docket No. USCG–2011–0038]

RIN 1625–AA87

##### Security Zones; Cruise Ships, Port of San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending its regulations for Security Zones; Cruise Ships, Port of San Diego, California, by providing a common description of all security zones created by this section to encompass only navigable waters within a 100 yard radius around any cruise ship that is located within the San Diego port area landward of the sea buoys bounding the Port of San Diego. This final rule removes a reference to shore area that is no longer necessary to provide for the safety of the cruise ship, vessels, and users of the waterway. Entry into these security zones will be prohibited unless specifically authorized by the Captain of the Port (COTP) San Diego, or a COTP designated representative.

**DATES:** This rule is effective April 20, 2011.

**ADDRESSES:** The contents of the online docket for this rulemaking, USCG–2011–0038, may be viewed by going to <http://www.regulations.gov>, inserting USCG–2011–0038 in the “Keyword”

box, and then clicking “Search.” This material is also available for inspection or copying at 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Commander Michael B. Dolan, Prevention, Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7261, e-mail [Michael.B.Dolan@uscg.mil](mailto:Michael.B.Dolan@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### Regulatory Information

On January 27, 2011, we published a notice of proposed rulemaking (NPRM) entitled Security Zones; Cruise Ships, Port of San Diego, California in the **Federal Register** (76 FR 4833). We received no comments on the proposed rule, either through the electronic docket office, or directly to Coast Guard Sector San Diego. A public meeting was not requested, and none were held. The telephone number listed in the proposed rule to contact the Captain of the Port listed was incorrect. We have corrected it in this final rule.

#### Basis and Purpose

Based on experience with actual security zone enforcement operations, the COTP San Diego has concluded that a security zone encompassing all navigable waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is within the San Diego port area inside the sea buoys bounding the Port of San Diego would provide for the safety of the cruise ship, vessels, and users of the waterway. Therefore, no reference to shore area in security zones for moored cruise ships is required.

#### Background

The Coast Guard is establishing a permanent security zone regulation. The security zones created by this rule will encompass all navigable waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is within the San Diego port area inside the sea buoys bounding the Port of San Diego. These security zones are necessary to provide for the safety of the cruise ship, other vessels and users of the waterway. Entry into these zones will be prohibited unless specifically authorized by the

Captain of the Port (COTP) San Diego, or a COTP designated representative.

Paragraph (b)(2) of the existing 33 CFR 165.1108 includes reference to the shore area. The COTP has determined that security zones for moored cruise ships in San Diego Harbor need not include any shore area, as the shore side passenger terminals used for cruise ship operations are regulated under regulations in 33 CFR part 105 issued under authority of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295). These MTSA regulations were published July 1 (68 FR 39315) and October 22, 2003 (68 FR 60515), months after the final rule establishing 33 CFR 165.1108 was published on January 8, 2003 (68 FR 1005).

The Coast Guard issued a temporary final rule that suspends § 165.1108 (b)(2) through June 20, 2011. See 75 FR 82243, December 30, 2010. With the issuance of this final rule, the temporary final rule of December 30, 2010, is no longer needed. This final rule will remove that section.

Further, this rule amends both 33 CFR 165.1108 (b) and (c). In addition to clarifying the area covered by security zones created by § 165.1108 (b), this rule simplifies the regulation by not distinguishing between anchored cruise ships, moored cruise ships and cruise ships underway. Also, paragraph (c) is amended to make it clearer that persons and vessels may not enter these security zones without first obtaining permission of the Captain of the Port San Diego.

#### Discussion of Comments and Changes

There were no comments submitted to the electronic docket or to Coast Guard Sector San Diego. No changes were made from the proposed regulation, except to correct the telephone number listed to contact the Captain of the Port.

#### 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.

It is not “significant” under the regulatory policies and procedures of

the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that full Regulatory Evaluation is unnecessary. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. In addition, due to National Security interests, the implementation of this security zone regulation is necessary for the protection of the United States and its people. The size of the zones is the minimum necessary to provide adequate protection for cruise ships.

#### 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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in San Diego Bay within a 100-yard radius of cruise ships covered by this rule.

This security zone regulation will not have a significant economic impact on a substantial number of small entities because vessel traffic can pass safely around the zones.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 (adjusted for inflation) 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 cause 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 proposed rule under Department of Homeland Security Management Directive 023-01 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 determination that this action is one of a category of actions that 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. This rule involves amending a security zone regulation by removing the reference to shore area in security zones for moored cruise ships. An environmental analysis checklist and a categorical exclusion

determination 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. 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; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. In § 165.1108, reinstate temporarily suspended paragraph (b)(2), and then revise paragraphs (b) and (c) to read as follows:

#### § 165.1108 Security Zones; Moored Cruise Ships, Port of San Diego, California.

\* \* \* \* \*

(b) *Location.* The following areas are security zones: All navigable waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is located within the San Diego port area landward of the sea buoys bounding the Port of San Diego.

(c) *Regulations.* Under regulations in 33 CFR part 165, subpart D, a person or vessel may not enter into or remain in the security zones created by this section unless authorized by the Coast Guard Captain of the Port, San Diego (COTP) or a COTP designated representative. Persons desiring to transit these security zones may contact the COTP at telephone number (619) 278-7033 or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

\* \* \* \* \*

#### § 165.T11-386 [Removed]

- 3. Remove § 165.T11-386.

Dated: March 7, 2011.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2011-6579 Filed 3-16-11; 4:15 pm]

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## POSTAL SERVICE

### 39 CFR Part 965

#### Rules of Practice in Proceedings Relative to Mail Disputes

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending the rules of practice of the Office of the Judicial Officer to clarify that parties may submit arguments as well as sworn statements in support of their claims to disputed mail. In addition, the rules are being amended to clarify some provisions and update obsolete language.

**DATES:** *Effective Date:* March 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** Administrative Judge Gary E. Shapiro, (703) 812-1910.

#### SUPPLEMENTARY INFORMATION:

*Supporting statements.* The rules governing proceedings relative to mail disputes are found in 39 CFR part 965. Formerly, § 965.5 provided that each party shall file a sworn statement of the facts supporting its claim to the disputed mail together with a copy of each document on which it relies in making such claim. The revised rule clarifies that the submission also may include argument as to why the factual statement and supporting documents should result in that party's claim to the disputed mail being accepted. The change concerning inclusion of argument in the parties' mail dispute submissions is intended to reflect longstanding practice to that effect. Clarifying this matter should avoid confusion from unclear wording that could, and in one recent case did lead a disputant to believe that only factual presentation and not argument is permitted by the rules. Corresponding changes are made to section 965.6.

*Editorial changes.* Several other changes are made to various sections of the rules for the purpose of clarifying the rules, updating the rules, or conforming the rules to current practice. None of the changes affects the substantive rights of disputants. Changes in sections 965.1, 965.2, 965.3, 965.4(b)(2), 965.8(a), and 965.14 reflect current practice and eliminate reference to obsolete language. Section 965.9(c) is eliminated as unnecessary.

*Effective date.* These revisions are changes in agency rules of practice before the Judicial Officer and do not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for their adoption by the Postal Service to become effective at an early date; and these revised rules