

(b) *Effective Dates.* This section is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Navy Region Southwest, or the Commanding Officer, Naval Base Coronado. Section 165.33 also contains other general requirements.

(d) *Enforcement.* The U. S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 28, 2003.

**Stephen P. Metruck,**

*Commander, Coast Guard, Captain of the Port, San Diego.*

[FR Doc. 03-3463 Filed 2-11-03; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP San Diego 03-007]

RIN 2115-AA97

#### Security Zone; San Diego Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Base, San Diego, California (33 CFR 165.1101), extending it by approximately 80 feet seaward of the pier heads at the request of the U.S. Navy. The additional size will accommodate the Navy's placement of anti-small boat barrier booms perpendicular to the piers. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

**DATES:** This rule is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03-007] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Sorrell,

Chief of Port Operations, Marine Safety Office San Diego at (619) 683-6495.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its Web site has described the current nationwide threat level as "Elevated." According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Although we had anticipated using the effective period of the current temporary final rule to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period for 3 months to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. This extension preserves the status quo within the Port while a permanent rule is developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the

Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rulemaking and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any final rule.

##### Background and Purpose

The Coast Guard is expanding the security zone (33 CFR 165.1101) by temporarily extending it approximately 80 feet seaward of the pier heads to allow the U.S. Navy to deploy anti-small boat barrier booms perpendicular to the piers. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. It will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base San Diego and it will protect transiting recreational and commercial vessels and their respective crews from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port or Commander, Navy Region Southwest. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than \$250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

##### Regulatory Evaluation

This temporary final 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