



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1048]

RIN 1625-AA87

West Oahu Offshore Security Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the navigable waters of Oahu's western shore. This action is necessary to safeguard the President of the United States and his official party. Entry into the temporary security zone established by this rule is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu, or her designated representatives.

DATES: This rule is effective from 11 p.m. HST on November 13, 2011 through 9 a.m. HST on November 15, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1048 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1048 in the "Keyword" box, and then clicking "Search." They are 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 temporary rule, call or e-mail LCDR Scott O. Whaley, U.S. Coast Guard; telephone 808-522-8264 (ext. 352), e-mail Scott.O.Whaley@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking

(NPRM) with respect to this rule. Due to a change in the plans of the President of the United States, sufficient notice of the zone location could not be released in time to adequately complete a notice-and-comment rulemaking.

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 publication in the Federal Register. Because of a change in the plans of the President of the United States, there is insufficient time before the security zone must be in place to publish this temporary final rule and then delay its effective date for 30 days after publication.

Background and Purpose

From November 13, 2011, through November 15, 2011, the President of the United States and his official party will be visiting the Ko'olina Beach Resort in Honolulu, Hawaii. The resort is located adjacent to U.S. navigable waters in the Honolulu Captain of the Port Zone. Accordingly, the U.S. Coast Guard is establishing this security zone in order to maintain optimum security to ultimately protect the President and his official party from all possible threats associated with vessels and persons in the water. Entry of persons or vessels into

these security zone will be prohibited unless authorized by the Captain of the Port (COTP) Honolulu.

Discussion of Temporary Final Rule

This temporary final rule will be effective from 11 p.m. HST on November 13, 2011 through 9 a.m. HST on November 15, 2011.

The security zone area is designated as the West Oahu Offshore Zone and covers all waters creating a box shape, encompassed by a line extending 1000 yards north along the coast from 21°20'16.00"N, 158°07'34.77"W; to 21°20'43.98"N, 158°07'44.52"W; then 1000 yards west to 21°20'36.10"N, 158°08'15.18"W; then 2000 yards south to 21°19'38.93"N, 158°07'54.33"W; then east to 21°19'1647.64"N, 158°07'23.79"W; then north along the shoreline back to the starting point. The West Oahu Offshore Zone does not include the entrance of Barbers Point Harbor Channel or the four lagoons adjacent to the Ko'olina Resort.

In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel will be permitted to transit into or remain in the zone except for those authorized support vessels, aircraft and support personnel, or other personnel or vessels authorized by the Captain of the Port or the District Commander. Any Coast Guard commissioned, warrant, or petty officer, or other Captain

of the Port representative permitted by law, may enforce the zone. Vessels, aircraft, or persons in violation of this rule will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

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Regulatory Analyses

We developed this temporary final 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. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This conclusion is based on the limited duration of the zone and the limited geographic area affected by it.

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.

This rule could affect the following entities, some of which might be small entities: the owners or operators of vessels for hire intending to transit or operate in the West Oahu Security Zone from November 13, 2011 to on November 15, 2011.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the security zone will be activated and thus subject to enforcement for a period of no longer than 2 days and will not affect vessels transiting or operating outside a box extending along the coast 1000 yards to the north of the northern most lagoon

at the Ko'olina Resort, to 1000 yards south, along the coast, of Ko'olina's northern most lagoon to 1000 yards to seaward from both points and then connected with a straight line.

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 rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Scott O. Whaley at (808) 522-8264 ext. 352.

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 will not create an environmental risk to health or risk to safety that might 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 will 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 rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, 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 which 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 regulation establishes one security zone. A final "Environmental Analysis Check List" and a final "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 AREA AND LIMITED ACCESS AREA

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; 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. Add § 165.T14-1048 to read as follows:

§ 165.T14-1048 West Oahu Offshore Security Zone.

(a) Location. The following area, from the surface of the water to the ocean floor, is a security zone: All waters encompassed by a line extending 1000 yards north along the coast from 21°20'16.00"N, 158°07'34.77"W; to 21°20'43.98"N, 158°07'44.52"W; then 1000 yards west to 21°20'36.10"N, 158°08'15.18"W; then 2000 yards south to 21°19'38.93"N, 158°07'54.33"W; then east to 21°19'1647.64"N, 158°07'23.79"W; then north along the shoreline back to the starting point. The West Oahu

Offshore Zone does not include the entrance of Barbers Point Harbor Channel or the four lagoons adjacent to the Ko'olina Resort.

(b) Enforcement period. The security zone described in paragraph (a) of this section will be enforced from 11 p.m. HST on November 13, 2011, to 9 a.m. HST on November 15, 2011.

(c) Definitions. As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Honolulu to assist in enforcing the security zone described in paragraph (a) of this section.

(d) Regulations. The general security zone regulations found in 33 CFR part 165, subpart D, apply to the security zone created by this temporary section.

(1) All persons are required to comply with the general regulations governing security zone found in 33 CFR 165.33.

(2) Entry into or remaining in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu.

(3) Persons desiring to transit the security zone identified in paragraph (a) of this section may contact the

Captain of the Port at Command Center telephone number (808) 842-2600 and (808) 842-2601, fax (808) 842-2624 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the zone. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(e) Enforcement personnel. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: November 4, 2011

J.M. Nunan,
Captain, U.S. Coast Guard
Captain of the Port Honolulu