

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[COTP Jacksonville 02-066]

RIN 2115-AA97

**Security Zones; Ports of Jacksonville, Canaveral, and Fernandina, FL****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish permanent security zones within the Captain of the Port Jacksonville, Florida's area of responsibility. The security zones would prohibit entry into, or movement within, 100 yards around all tank vessels, cruise ships, and military pre-positioning ships when these vessels enter, depart or moor within the ports of Jacksonville, Canaveral, and Fernandina. These security zones are needed to ensure public safety and prevent sabotage or terrorist acts against such vessels in these ports.

**DATES:** Comments and related material must reach the Coast Guard on or before September 27, 2002.

**ADDRESSES:** 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 Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Drew Casey, Coast Guard Marine Safety Office Jacksonville, at (904) 232-2640, Ext. 105.

**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 [COTP Jacksonville 02-066] 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 8½ by 11 inches, suitable for copying. If you would like to know 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 after considering comments received.

**Public Meeting**

We do not plan to hold a public meeting. However, you may request a meeting by writing to Marine Safety Office Jacksonville at the address under **ADDRESSES** explaining why a meeting would be beneficial. If the Coast Guard determines that a public meeting will aid this rulemaking, a meeting will be held at a time and place announced by separate notice in the **Federal Register**.

**Background and Purpose**

On September 12, 2001, one day after the September 11 terrorist attacks, the Coast Guard established a temporary rule establishing 100-yard security zones around tank vessels, passenger vessels, and military pre-positioning ships entering, departing, or moored in the ports of Jacksonville and Canaveral. That rule, entitled "Security Zones; Port of Jacksonville and Port Canaveral, FL", was published in the **Federal Register** on September 26, 2001 (66 FR 49104) and expired on October 3, 2001.

On October 17, 2001, the Coast Guard published a second temporary rule entitled, "Security Zones; Port of Jacksonville and Port Canaveral, FL", in the **Federal Register** (66 FR 52689) continuing these zones until June 15, 2002.

On June 18, 2002, we published another temporary final rule in the **Federal Register**, entitled "Security Zones; Ports of Jacksonville Canaveral, FL", extending these security zones until November 15, 2002 (67 FR 41339) to allow us to publish this notice of proposed rulemaking. This temporary final rule would be removed if a final rule is published and effective prior to the November 15, 2002 termination of the temporary final rule.

These security zones are needed to prevent sabotage or terrorist acts against these vessels within the Captain of the Port Jacksonville's area of responsibility. Following the attacks of September 11, 2001, by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorist attacks are likely.

The Coast Guard proposes to establish permanent security zones around tank vessels, passenger vessels, and military pre-positioning ships entering, departing, or moored in the Ports of Jacksonville, Canaveral, and Fernandina as part of a comprehensive port security initiative designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. These vessels are deemed particularly

vulnerable to subversive or terrorist acts, and the consequences of such acts could result in significant loss of property and human life.

**Discussion of Proposed Rule**

The proposed rule would prohibit persons and vessels from coming within 100 yards of all tank vessels, cruise ships and military pre-positioned ships entering, departing, or moored within the ports of Jacksonville, Canaveral, and Fernandina. No persons or vessels will be allowed to enter or remain within these security zones without the permission of the Captain of the Port. These security zones are activated when the subject vessel passes the St. Johns River Sea Buoy, at approximate position 30°23'35" N, 81°19'08" W, when entering the Port of Jacksonville, or passes either Port Canaveral Channel Entrance Buoys #3 or #4, at respective approximate positions 28°22.7' N, 80°31.8' W and 28°23.7' N, 80°29.2' W, when entering Port Canaveral or passes St. Mary's River Sea Buoy, at approximate position 30°40.8" N, 81°11.8" W, when entering the Port of Fernandina. This proposed rule is identical to the temporary final rule currently in effect.

**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 Transportation (DOT) (44 FR 11040, February 26, 1979).

While recognizing the potential impacts to the public, the Coast Guard believes the security zones are necessary for the reasons described above. However, we expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. There is generally enough room for vessels to navigate around these proposed security zones. Where such room is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels as needed.

**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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit Jacksonville, Canaveral, and Fernandina harbors in the vicinity of tank vessels, cruise ships, and military pre-positioning ships. This proposed rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, leaving in most cases ample space for vessels to navigate around them. The zones will not significantly impact commercial and passenger vessel traffic patterns, and mariners will be notified of the proposed zones via Local Notice to Mariners and marine broadcasts. Where such room is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels to transit through the proposed zones as needed.

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 affect it economically.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its proposed 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 LTJG Drew Casey, Marine Safety Office Jacksonville, at (904) 232-2640, Ext. 105.

#### 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. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would 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 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. 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2-1, (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is 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 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. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

#### § 165.T-07-060 [Removed]

2. Remove § 165.T-07-060.

3. Add § 165.759 to read as follows:

#### § 165.759 Security Zones; Ports of Jacksonville, Canaveral, and Fernandina, FL.

(a) *Location.* Moving and fixed security zones are established 100 yards around all tank vessels, cruise ships, or military pre-positioned ships entering, departing, or moored in the ports of Jacksonville, Canaveral, or Fernandina.

These security zones are activated when the subject vessel passes the St. Johns River Sea Buoy, at approximate position 30°23'35" N, 81°19'08" W, when entering the Port of Jacksonville, or passes either Port Canaveral Channel Entrance Buoys #3 or #4, at respective approximate positions 28°22.7' N, 80°31.8' W and 28°23.7' N, 80°29.2' W, when entering Port Canaveral or passes St. Mary's River Sea Buoy, at approximate position 30°40.8' N, 81°11.8' W, when entering the Port of Fernandina.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.30 and 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Jacksonville.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of these security zones unless previously authorized by the Captain of the Port, Jacksonville or his authorized representative.

(c) *Definition.* As used in this section, *cruise ship* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 12 passengers for hire, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: August 13, 2002.

**M.M. Rosecrans,**

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

[FR Doc. 02-21919 Filed 8-27-02; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MA-085b; A-1-FRL-7268-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Rate-of-Progress Emission Reduction Plans for the Boston-Lawrence-Worcester Serious Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a State Implementation Plan

(SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes 15 percent and post-1996 rate-of-progress plans for the Massachusetts portion of the Boston-Lawrence-Worcester serious ozone nonattainment area. The intended effect of this action is to propose approval of this SIP revision as meeting the requirements of the Clean Air Act

**DATES:** Written comments must be received on or before September 27, 2002.

**ADDRESSES:** Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the state submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Robert McConnell, (617) 918-1046.

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this action rule, we contemplate no further activity. If EPA receives adverse comments, we will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 13, 2002.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 60

[SIP Nos. MT-001-0042b, MT-001-0044b, MT-001-0045b; FRL-7261-2]

#### Approval and Promulgation of Air Quality Implementation Plans for the State of Montana; Revisions to the Administrative Rules of Montana

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of Montana on April 30, 2001, May 21, 2001 and December 20, 2001. The April 30, 2001 and December 20, 2001 submittals revise the State's Administrative Rules of Montana (ARM) by updating Incorporation by Reference rules. The May 21, 2001 submittal repeals the State's Sulfur Oxide—Primary Copper rule. We are also announcing that on February 1, 2002, we updated the delegation of authority for the implementation and enforcement of the New Source Performance Standards (NSPS) to the State. Finally, the Governor's April 30, 2001 submittal contains other SIP revisions which will be addressed separately. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions