

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.____ to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.____ Red Hills

(a) *Name.* The name of the viticultural area described in this section is “Red Hills.”

(b) *Approved Map.* The appropriate maps for determining the boundary of the Red Hills viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

- (1) Clearlake Highlands Quadrangle, CA—Lake Co. 1958, photorevised 1975;
- (2) Lower Lake Quadrangle, CA—Lake Co. 1958, photorevised 1975;
- (3) Whispering Pines Quadrangle, CA 1958, photorevised 1975;
- (4) Kelseyville Quadrangle, CA—Lake Co. 1959, photorevised 1975.

(c) *Boundary.* The Red Hills viticultural area is located entirely within the Clear Lake viticultural area of Lake County, California, on the south shore of Clear Lake, between the towns of Lower Lake and Kelseyville, CA. The point of beginning is the intersection of the Clear Lake shoreline, south of Slater Island, with the common boundary line between Sections 3 and 4, T12N, R7W (Clearlake Highlands Quadrangle).

(1) Then proceed straight south along the common boundary line of Sections 3 and 4, T12N, R7W to its intersection with the 1,400-foot contour line, Section 3, T12N, R7W (Clearlake Highlands Quadrangle);

(2) Then proceed southeast along the 1,400-foot contour line onto the Lower Lake Quadrangle map south of Anderson Flat, reverse direction with the contour line, and continue west to its intersection with Seigler Canyon Creek, Section 10, T12N, R7W (Clearlake Highlands Quadrangle);

(3) Then proceed west along Seigler Canyon Creek to its confluence with Perini Creek, and continue south along Perini Creek to its intersection with the 1,800-foot contour line, Section 16, T12N, R7W (Clearlake Highlands Quadrangle);

(4) Then proceed in a generally southern direction and then generally west along the 1,800-foot contour line to its intersection with Copsey Creek, Section 28, T12N, R7W (Whispering Pines Quadrangle);

(5) Then proceed west along Copsey Creek to its headwaters in Section 29, and continue straight westerly to the headwaters of Bad Creek at its intersection with the Section 30 east boundary line, T12N, R7W (Whispering Pines Quadrangle);

(6) Then proceed due west to the intersection of Big Canyon Road, Section 30, T12N, R7W (Whispering Pines Quadrangle);

(7) Then proceed north along Big Canyon Road to its intersection with Loch Lomond Road, Section 19, T12N, R7W (Clearlake Highlands Quadrangle);

(8) Then proceed southwest along Loch Lomond Road to its first intersection with the 2,640-foot contour line, Section 25, T12N, R8W (Whispering Pines Quadrangle);

(9) Then proceed northwest in a straight line to Seigler Mountain, elevation 3,692 feet, and continue northwest along the same line of direction to its intersection with Salmina Road, Section 23, T12N, R8W (Clearlake Highlands Quadrangle);

(10) Then proceed north along Salmina Road to its intersection with Highway 175, reverse direction and continue south along Highway 175 to its intersection with the Section 15 south boundary line, T12N, R8W, (Clearlake Highlands Quadrangle);

(11) Then proceed straight northwest to Mt. Hannah, elevation 3,978 feet, Section 16, T12N, R8W, (Clearlake Highlands Quadrangle);

(12) Then proceed straight southwest to the intersection of the 3,000-foot contour line with the Section 17 east boundary line, and continue along the same line of direction to the 2,800-foot contour line east of Boggs Lake, Section 17, T12N, R8W (Kelseyville Quadrangle);

(13) Then proceed north and west along the 2,800-foot contour line around Boggs Lake to its intersection with Harrington Flat Road, Section 18, T12N, R8W (Kelseyville Quadrangle);

(14) Then proceed north along Harrington Flat Road to its intersection with Bottle Rock Road, and continue north along Bottle Rock Road to its intersection with an unnamed unimproved dirt road, just inside Section 1, T12N, R9W (Kelseyville Quadrangle);

(15) Then proceed northwest along the unimproved dirt road to Boundary Marker 2080, Section 1, T12N, R9W (Kelseyville Quadrangle);

(16) Then proceed straight northeast to Mt. Olive, elevation 2,485 feet, and continue along the same line of direction an unnamed peak, elevation 2,295 feet, Section 30, T13N, R8W (Kelseyville Quadrangle);

(17) Then proceed straight northeast to the intersection of the 2,600-foot contour line with the Section 19 east boundary line, T13N, R8W (Kelseyville Quadrangle);

(18) Then proceed northwest along the 2,600-foot contour line to its intersection with an unnamed stream and Section 20 west boundary line, T13N, R8W (Kelseyville Quadrangle);

(19) Then proceed straight northeast to the intersection of Konocti Bay Road and Soda Bay Road, and continue due east to the shore of Clear lake, Section 22, T13N, R8W (Clearlake Highlands Quadrangle);

(20) Then proceed southeast along the shoreline of Clear Lake, returning to the point of beginning at its intersection with the common boundary line between Sections 3 and 4, T12N, R7W (Clearlake Highlands Quadrangle).

Signed: September 4, 2002.

Bradley A. Buckles,

Director.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02–019]

RIN 2115–AA97

Security Zones; San Francisco Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones extending 100 yards around and under all cruise ships and tank vessels that enter, are moored in, anchored in or depart from the San Francisco Bay, California, and Delta ports. These proposed security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port San Francisco Bay.

DATES: Comments and related material must reach the Coast Guard on or before November 29, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. 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 the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana Cranston, Chief, Waterways Management Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-3073.

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 San Francisco Bay 02-019), 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 8 1/2 by 11 inches, suitable for copying. If you would like to know that 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 in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In

addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship and/or tank vessel would have on the public interest, the Coast Guard proposes to establish permanent security zones around and under cruise ships and tank vessels entering, departing, or moored within the San Francisco Bay and Delta ports. These security zones will help the Coast Guard prevent vessels or persons from engaging in terrorist actions against cruise ships and tank vessels. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a cruise ship and/or tank vessel would have on the multiple passengers on board and surrounding area and communities, security zones are prudent for these types of vessels.

On December 21, 2001, we issued a rule under docket COTP San Francisco Bay 01-012, and published that rule in the **Federal Register** (67 FR 7611, February 20, 2002) creating temporary section 165.T11-098 of Title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11-098, which expired at 11:59 p.m. PDT on June 21, 2002, the Coast Guard established 100-yard security zones around all cruise ships and tank vessels that entered, were moored in, or departed from the San Francisco Bay and Delta ports.

On June 12, 2002, a change in effective period temporary rule was issued, under docket COTP San

Francisco Bay 02-012 and was published in the **Federal Register** (67 FR 42486, June 24, 2002), under the same previous temporary section 165.T11-098, which is set to expire at 11:59 p.m. on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exists. The proposed regulation differs slightly from temporary section 165.T11-098. Although, while implicit in the temporary rule, the security zones proposed here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of cruise ships and/or tank vessels. Accordingly, this rulemaking proposes to make permanent the temporary security zones established on December 21, 2001, under docket number COTP SFB 01-012, 33 CFR 165.T11-098 published in the **Federal Register** on February 20, 2002 (67 FR 7611). The effective period of that temporary rule was extended until December 21, 2002, by another rule published in the **Federal Register** on June 24, 2002 (67 FR 42486).

Discussion of Proposed Rule

The Coast Guard proposes to establish moving and fixed security zones around all cruise ships and tank vessels that are anchored, moored, or underway within the San Francisco Bay and Delta ports. These proposed security zones are activated when any cruise ship and/or tank vessel passes the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46'9" N, 122°35'4" W and 37°46'5" N, 122°35'2" W, respectively). This proposed rule, for security concerns, prohibits entry of any vessel inside the security zone surrounding a cruise ship and/or tank vessel. These security zones are within a 100-yard radius around any cruise ship and/or tank vessel that is anchored at a designated anchorage; that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas; and that is underway.

These security zones are needed for national security reasons to protect cruise ships, tank vessels, the public, transiting vessels, adjacent waterfront facilities, and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones

take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Pursuant to 33 U.S.C. 1232 and 33 CFR part 27, any violation of the security zone described herein, is punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States; a maximum criminal fine of \$10,000; and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may request the use of resources and personnel of other government agencies to assist in the patrol and enforcement of the regulation. The Captain of the Port retains discretion to initiate Coast Guard civil penalty action against non-compliant parties pursuant to the PWSA, or, refer appropriate cases to the cognizant U.S. Attorney Office for disposition. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

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).

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.

The effect of this regulation will not be significant because the zones will encompass only a small portion of the waterway. Furthermore, vessels will be able to pass safely around the zones, and may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships and laden tank vessels, their crews and passengers, other vessels operating in the vicinity of the cruise ships and laden tank ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel *en route* the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship and/or a tank ship in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during cruise ship and tank ship transits, which will last for approximately 30 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

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. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions of the cruise ships and tank ships covered by these security zones. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited period of times while the cruise ships and/or tank ships are transiting, moored, or in anchorage. Delays, if any, are expected to be less than thirty minutes in duration.

Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship or tank ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship or tank ship will last about 30 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship or tank vessel is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the COTP or his or her designated representative.

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 proposed rule so that they can better evaluate its 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 Lieutenant Diana Cranston, Chief, Waterways Management Division, (510) 437–3073.

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. Though 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 effect 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.

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

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because we are proposing to establish security zones. 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.

2. Add § 165.1183 to read as follows:

§ 165.1183 Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the San Francisco Bay and Delta ports.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship and tank ship that is anchored at a designated anchorage within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W and 37°46.5' N, 122°35.2' W, respectively);

(2) The shore area and all waters, extending from the surface to the sea

floor, within a 100-yard radius around any cruise ship and tank ship that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W and 37°46.5' N, 122°35.2' W, respectively); and

(3) All waters, extending from the surface to the sea floor within a 100-yard radius around any cruise ship and/or tank ship that is underway shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 and 4195, positions 37°46.9' N, 122°35.4' W and 37°46.5' N, 122°35.2' W, respectively).

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 510-437-3073 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.

(3) When a cruise ship or tank vessel approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's or tank vessel's security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

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

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by state and local law enforcement agencies as necessary.

Dated: October 10, 2002.

G.M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

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