



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0445]

RIN 1625-AA87

Security Zone; San Juan, Puerto Rico

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is revising an existing, moving security zone for the Port of San Juan, San Juan, Puerto Rico. The revision expands the existing moving security zone to a 200-yard radius around all cruise ships entering, departing, or anchored in the Port of San Juan. While the cruise ships are moored at the Port of San Juan, the security zone remains a 50-yard radius around the cruise ships. This action continues to prohibit persons and vessels from entering, anchoring, mooring or transiting in the security zone, unless authorized by the Coast Guard Captain of the Port of San Juan or a designated representative. This action is necessary to better meet the safety and security needs of the Port of San Juan.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0445 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Randy Johnston, Sector San Juan Prevention Department, Waterways

Management Division, U.S. Coast Guard; telephone 787-729-2380, email

ssjwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The existing regulation in 33 CFR 165.758 contains a moving security zone of 50-yards around all cruise ships entering, departing, moored or anchored in the Port of San Juan, Puerto Rico. On May 27, 2020, the Coast Guard received a request from Coast Guard Station San Juan to adjust the security zone to 200-yards to provide an adequate reaction zone for maritime security threats and hazards and to match similar security zones in other ports. In response, on November 2, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Security Zone; San Juan, Puerto Rico” (85 FR 69299). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the adjustment of the security zone. During the comment period that ended December 2, 2020, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Juan (COTP) has determined that adjusting the security zone is necessary to better meet the safety and security needs of the Port of San Juan. The purpose of this rule is to ensure the safety and security of cruise ships in the Port of San Juan while they are entering, departing, moored, and anchored in port.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on November 2, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule finalized the proposed revisions to the existing moving security zone in § 165.758 from a 50-yard to a 200-yard radius around all cruise ships entering, departing, or anchored in the Port of San Juan, San Juan, Puerto Rico. Increasing the security zone from 50-yards to 200-yards while the cruise ships are in transit or anchored provides law enforcement assets with more sufficient time to react in case of potential terrorist acts, sabotage, or other subversive acts, accidents, or hazards of a similar nature. While the cruise ships are moored, the security zone remains at a 50-yard radius around the cruise ships. No vessel or person is permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, available exceptions to the enforcement of the security zone, and notice to mariners. The regulated area will impact small designated areas of navigable channels within San Juan Harbor, San Juan,

Puerto Rico. The rule will allow vessels to seek permission to enter, transit through, anchor in, or remain within the security zone. Additionally, notifications to the marine community will be made through Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, and on-scene representatives. The notifications will allow the public to plan operations around the affected areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rulemaking. 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.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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.

E. 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.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined 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 involves a revision to an existing security zone to establish a 200-yard radius around all cruise ships entering, departing, moored or anchored in the Port of San Juan, San Juan, Puerto Rico. While cruise ships are moored, the security zone remains at a 50-yard radius around the cruise ships. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.758 to read as follows:

§ 165.758 Security Zone; San Juan, Puerto Rico.

(a) *Regulated area.* A moving and fixed security zone is established in the following area:

(1) The waters within a 200-yard radius around all cruise ships entering, departing, or anchored in the Port of San Juan, Puerto Rico beginning one mile north of the Bahía de San Juan Lighted Buoy #3, in approximate position 18°28'17.8"N, 066°07'36.4"W and continuing until the vessel passes this buoy on its departure from the port. All coordinates are North American Datum 1983.

(2) The waters within a 50-yard radius around all cruise ships moored in the Port of San Juan, Puerto Rico.

(b) *Regulations.* (1) No person or vessel may enter, transit, or remain in the security zone unless authorized by the Captain of the Port San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those operating in the security zone with the Captain of the Port's authorization must comply with all lawful orders or directions given to them by the Captain of the Port or a designated representative.

(2) Vessels encountering emergencies, which require transit through the moving security zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the security zone with a Coast Guard designated escort.

(3) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787-289-2041. The Coast Guard Patrol Commander enforcing the security zone can be contacted on VHF-FM channels 16 and 22A.

- (4) Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the security zone will be in effect by providing advance notice of scheduled arrivals and departure of cruise ships via a Marine Broadcast Notice to Mariners.
- (5) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.
- (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 150 passengers for hire, except for a ferry.

Dated: April 6, 2021.

Gregory H. Magee,
Captain, U.S. Coast Guard,
Captain of the Port San Juan.

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