

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[CGD17-05-002]****RIN 1625-AA11 and 1625-AA87****Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish moving and fixed security zones in the navigable waters of Coast Guard District 17 around and under all high capacity passenger (HCP) vessels. The zones would extend 100 yards from HCP vessels while they are underway and 25 yards from HCP vessels while they are moored or anchored. The Coast Guard also proposes to establish a regulated navigation area that would require other vessels operating within 250 yards of a HCP vessel be subject to speed restrictions. These security zones and regulated navigation area are needed to secure and safeguard HCP vessels and ports from sabotage, terrorist acts, and other incidents. Entry into these security zones would be prohibited, unless specifically authorized by the Coast Guard District 17 Commander, cognizant Captain of the Port, or the on-scene official patrol.

**DATES:** Comments and related material must reach the Coast Guard on or before April 8, 2005.

**ADDRESSES:** You may mail comments and related material to District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801. District 17 (MOC) 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 District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Matthew York, District 17 (MOC), 709 West 9th St., Room 753, Juneau, Alaska 99801, (907) 463-2821.

**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 (CGD17-05-002), 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 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.

**Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to District 17 (MOC) 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 the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS COLE and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping

interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States.

In its effort to thwart terrorist activity, the Coast Guard has increased 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 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 Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (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.

Due to increased awareness of the potential for future terrorist attacks, the Coast Guard, as lead Federal agency for maritime homeland security, has determined that the Coast Guard District Commander and Captain of the Port (COTP) must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce.

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 high capacity passenger (HCP) vessel, such as a cruise ship, would have on the public interest, the Coast Guard is proposing to establish a moving and a fixed security zone in the navigable waters of Coast Guard District 17 around and under all high capacity passenger (HCP) vessels extending 100 yards from the vessels while they are underway and extending 25 yards from the vessels while they are moored or anchored. The Coast Guard also proposes that other vessels operating within 250 yards of a HCP vessel be subject to speed restrictions and other orders as necessary to provide the Coast Guard with an enhanced ability to manage vessel traffic in the vicinity of HCP vessels and deter potential sabotage, terrorist acts, or other incidents involving HCP vessels. These security zones are needed to secure and safeguard HCP vessels and ports from

sabotage, terrorist acts, and other incidents. Entry into this security zone would be prohibited, unless specifically authorized by the Coast Guard District 17 Commander, cognizant COTP, or the on-scene official patrol. The proposal also provides that the Coast Guard District 17 Commander, cognizant COTP, or on-scene official patrol may be assisted by other Federal, State, or local government agencies in enforcing these security zones.

#### Discussion of Proposed Rule

This proposed rule would control vessel movement in a regulated area surrounding high capacity passenger (HCP) vessels to address security concerns. It would prohibit persons or vessels from entering a security zone that extends 100 yards around and under HCP vessels that are underway and 25 yards around and under HCP vessels that are anchored or moored within the Coast Guard District 17 zone, except as noted in this regulation.

For the purpose of this regulation, HCP vessels are those vessels of U.S. or foreign registry, certificated to carry 500 passengers or more. Public vessels are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof. For the purpose of this regulation, Alaska Marine Highway vessels are not HCP vessels. The passengers and crew of the respective HCP vessel are persons not subject to this regulation. Public vessels, vessels working on behalf and at the direction of the HCPs (*i.e.*, local transport of passengers, tender vessels, etc.), or vessels granted waiver or permission by the 17th Coast Guard District Commander, cognizant Captain of the Port (COTP), or on-scene official patrol are vessels not subject to this regulation.

Vessels requesting to enter the security zone must contact the Coast Guard District 17 Commander, his or her designated representatives, the cognizant COTP, or on-scene official patrol on VHF-FM channel 16 or 13. The Coast Guard District 17 Commander, the cognizant COTP, or on-scene official patrol may permit vessels to enter the security zone if it is necessary to ensure a safe passage in accordance with the Navigation Rules or for other good cause. Similarly, all vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of a passing HCP vessel.

All vessels operating within 250 yards of a HCP vessel in the RNA must proceed at the minimum speed necessary to maintain a safe course, unless required to maintain speed by

the navigation rules. All persons and vessels within 250 yards of a HCP vessel in the RNA must be attentive to and comply with the orders of the District Commander, cognizant COTP, or designated on-scene official patrol.

#### 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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed rule would restrict access to the regulated area, the effect of this proposed rule will not be significant because: (i) The individual HCP vessel security zones are limited in size; (ii) the Coast Guard District 17 Commander, his or her designated representatives, the cognizant Captain of the Port, or on-scene official patrol may permit vessels to enter the security zone if it is necessary to ensure a safe passage in accordance with the Navigation Rules or for other good cause; (iii) the Coast Guard District 17 Commander or cognizant Captain of the Port may grant waivers to certain vessels or classes of vessels under this proposal; (iv) the HCP vessel security zone for any particular transiting HCP vessel will effect a given geographical location for a limited time; and, (v) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

#### 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 would affect

the following entities, some of which may be small entities: The owners or operators of vessels intending to operate near or anchor in the vicinity of HCP vessels in the navigable waters of Alaska.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The individual HCP vessel security zones are limited in size; (ii) the Coast Guard District 17 Commander, his or her designated representatives, the cognizant Captain of the Port, or on-scene official patrol may permit vessels to enter the security zone if it is necessary to ensure a safe passage in accordance with the Navigation Rules or for other good cause; (iii) the Coast Guard District 17 Commander or cognizant Captain of the Port may grant waivers to certain vessels or classes of vessels under this proposal; (iv) the HCP vessel security zone for any particular transiting HCP vessel will effect a given geographical location for a limited time; and, (v) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 LT Matthew York, District 17 (MOC) at (907) 463–2821. 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 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 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.

#### 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. 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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 § 165.1711 to read as follows:

#### § 165.1711 Regulated Navigation Area and Security Zones; Protection of High Capacity Passenger Vessels in Alaska.

(a) *Definitions.* As used in this section—

*Cognizant Captain of the Port or cognizant COTP* means the Captain of the Port (COTP) or his or her designated representatives with authority over the relevant body of water. There are three COTPs in the District 17: Southeast Alaska, Western Alaska, and Prince William Sound. The boundaries for these three COTP zones are described, respectively, in 33 CFR 3.85–10, 3.85–15, and 3.85–20.

*District 17 Commander* means the Coast Guard District Commander for the Coast Guard District 17 or his or her designated representatives. The boundaries for the Coast Guard District 17 are described in 33 CFR 3.85–1.

*Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

*High capacity passenger (HCP) vessel* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 500 passengers for hire.

*Navigation rules* mean international and inland navigation rules in 33 CFR chapter I, subchapters D and E.

*Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

*Official Patrol* means those persons designated by the District Commander or cognizant COTP to monitor a HCP vessel security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the COTP. Persons authorized in paragraph (e) of this section to enforce this section are designated as the Official Patrol.

*State Law Enforcement Officer* means any peace officer as defined in Alaska Statute § 01.10.060.

*Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except public vessels.

(b) *Location.* (1) *Regulated navigation area.* The following area is a regulated navigation area (RNA): All navigable waters of United States within the boundaries of the Coast Guard District 17 (Alaska).

(2) *Security zone.* A security zone is established around and under, and is centered on, each high capacity passenger (HCP) vessel within the RNA described in paragraph (b)(1) of this section, and extends 100 yards from the vessel while it is underway and 25 yards from the vessel while it is moored or anchored. A security zone enforced when a HCP vessel enters the RNA and remains enforced until the HCP vessel leaves the RNA. This is a moving security zone when the HCP vessel is in transit and a fixed zone when the HCP vessel is moored or anchored. A security zone will not extend beyond the boundary of the RNA in this section.

(c) *Regulations.* (1) Under 33 CFR 165.33, no person or vessel may enter into the security zones established under this section unless authorized by the Coast Guard District 17 Commander, the cognizant Captain of the Port, or the on-scene official patrol.

(2) When a HCP vessel in the RNA approaches within 100 yards of a vessel that is moored or anchored in a designated anchorage area, the stationary vessel must stay moored or anchored while it remains within the HCP vessel's security zone unless it is either ordered by or given permission from the Coast Guard District 17 Commander, the cognizant Captain of the Port, or the on-scene official patrol to do otherwise.

(3) The COTP will inform the public of the existence of security zone around and under HCP vessels in the RNA by Marine Safety Information Broadcasts.

(4) Vessels that seek to enter a security zone or exceed speed limits established in this section, may contact the on-scene official patrol (if there is one) or the cognizant COTP to request permission.

(5) A vessel in the RNA operating within 250 yards of a HCP vessel must proceed at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the navigation rules. All persons and vessels within 250 yards of a HCP vessel in the RNA must be attentive to and comply with the orders of the District

Commander, cognizant COTP, or designated on-scene official patrol.

(6) When conditions permit, the District Commander, cognizant COTP, or designated on-scene official patrol should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter the security zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Grant waiver of any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of security, safety, or environmental safety. Applications for waiver should be directed initially to the cognizant COTP. To be effective, all waivers must be granted in writing by the District Commander or cognizant COTP.

(d) *Contact information.* (1) Vessels seeking permission under paragraphs (c)(2), (c)(4), or (c)(6) of this section should contact the cognizant COTP or on-scene official patrol to make a timely request.

(2) The on-scene official patrol (if there is one) or the cognizant COTP or his or her designated representatives may be contacted by the following means:

(i) Channel 13 or 16, VHF-FM.

(ii) By telephone: Southeast Alaska (907) 957-0150; Prince William Sound (907) 835-7205; and Western Alaska (907) 271-6700.

(3) The District Command Center's 24-hour non-emergency telephone number is (907) 463-2001.

(e) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a HCP vessel, any Federal Law Enforcement Officer or State Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04-11. In addition, the District Commander, cognizant COTP, or on-scene official patrol may be assisted by other Federal, State or local agencies in enforcing this section.

(f) *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: February 7, 2005.

**James C. Olson,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.*

[FR Doc. 05-4598 Filed 3-8-05; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-05-010]

RIN 1625-AA00 and 1625-AA87

#### Safety and Security Zones; Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to remove three established safety/security zone regulations for Chesapeake Bay, Maryland, Captain of the Port Hampton Roads and Atlantic Ocean, Chesapeake and Delaware Canal, Delaware Bay, Delaware River and its tributaries. The Commander of the Fifth Coast Guard District recently issued a District-wide security zone regulation for escorted vessels that will make these three previously established safety/security zone regulations unnecessary. This proposed rule would eliminate any duplication between the three established safety/security zone regulations and the recently established District-wide security zone regulation for escorted vessels.

**DATES:** Comments and related material must reach the Coast Guard on or before April 8, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-05-010 and are available for inspection or copying at the Fifth Coast Guard District, Marine Safety Division, 431 Crawford Street, Portsmouth, Virginia, 23704 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant E.J. Terminella, Fifth Coast Guard District, at (757) 398-7783.

#### 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 [CGD05-05-010],