

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: July 14, 2005.

**R.F. Duncan,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD17-05-003]

RIN 1625-AA87

#### Security Zone; High Capacity Passenger Vessels in the Seventeenth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary moving security zones around all escorted high capacity passenger vessels during their transit in the navigable waters of the Seventeenth Coast Guard District. These temporary security zones prohibit any vessel from entering within 100 yards of an escorted high capacity passenger vessel while in transit. These temporary security zones are necessary to mitigate potential terrorist acts and enhance public and maritime safety and security.

**DATES:** This rule is effective from July 21, 2005, to September 29, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD17-05-003 and are available for inspection or copying at United States Coast Guard, District 17 (moc), 709 West 9th Street, Juneau, AK 99801 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Matthew York, District 17 (moc), 709 West 9th Street, Juneau, AK 99801, (907) 463-2821.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

In a different rulemaking, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska" in the **Federal Register** (70 FR 11595, March 9, 2005), docket number

CGD17-05-002. That NPRM included provision for moored and anchored vessels that are not included in these temporary security zones. We received several letters in response to that NPRM, which are currently under review and consideration. A supplemental NPRM to docket CGD17-05-002 will be published, and the public will be given the opportunity to comment on the proposed procedures prior to any final rule being established.

This temporary security zone is limited to high capacity passenger vessels during transit in the waters of the Seventeenth Coast Guard District and is only effective until September 29, 2005. This is a temporary security zone designed specifically to protect high capacity passenger vessels during transit through the waters in the Seventeenth Coast Guard District until September 29, 2005. This temporary zone will only be effective for 70 days and will only apply to high capacity passenger vessels transiting under an escort as defined in this temporary final rule.

We did not publish a NPRM for this temporary regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM because this rule is necessary to ensure the safe transit of high capacity passenger vessels. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard high capacity passenger vessels from sabotage and other subversive acts or accidents. This temporary security zone has been carefully designed to minimally impact the public while providing protections for high capacity passenger vessels. For the same reasons, the Coast Guard finds that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**.

##### Background and Purpose

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as Lead Federal Agency for maritime homeland security, has determined that the District Commander and the Captain of the Port 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. Terrorists have demonstrated both desire and ability to utilize multiple means in different geographic areas to successfully carry out their terrorist missions, highlighted by the recent events in London.

During the past 3 years, the Federal Bureau of Investigation has issued several advisories to the public concerning the potential for terrorist attacks within the United States. The October 2002 attack on a tank vessel, M/V LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) and Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Furthermore, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. port and waterway users 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 addition to escorting vessels, a security zone is a tool available to the Coast Guard that may be used to control maritime traffic operating in the vicinity of vessels, which the Coast Guard has determined need additional security measures during their transit. The District Commander has made a determination that it is necessary to establish a security zone around vessels that are escorted. This temporary regulation establishes security zones around escorted high capacity passenger vessels to protect these vessels, but also to safeguard the port, harbors or waterfront facilities they visit.

##### Discussion of Rule

This temporary security zone places a 100-yard security zone around high capacity passenger vessels that are being escorted by a Coast Guard surface, air or Coast Guard Auxiliary asset, or by a State law enforcement agency during their transit through the Seventeenth Coast Guard District. Persons desiring to transit within 100 yards of an escorted cruise ship transiting in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) and obtain permission to transit within 100 yards of the escorted vessel. The boundaries of the Seventeenth Coast Guard District are defined in 33 CFR 3.85-1(b). This includes territorial waters 12 nautical miles from the territorial sea baseline as defined in 33 CFR part 2 subpart B.

Stationary vessels that are moored or anchored must remain moored or anchored when an escorted high capacity passenger vessels approaches within 100 yards of the stationary vessel unless the designated on scene representative has granted entry approval.

### Regulatory Evaluation

This temporary 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the relatively small size of the limited access area around each ship, the minimal amount of time that vessels will be restricted when the zone is being enforced and the short duration this temporary rule will be in effect. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the District Commander, Captain of the Port or their designated representatives.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities. This temporary security zone only applies to high capacity passenger vessels that are transiting with an escort. It does not apply when the vessels are moored or anchored in port. Furthermore, vessels desiring to enter the security zone may contact the designated on scene representative and request permission to enter the zone.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the 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), 709 West 9th St, Room 753, Juneau, Alaska 99801. 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 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule does 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 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 does 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 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.

### 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 Commandant Instruction M16475.ID,

which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2-1, paragraph (34)(g) of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

#### 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:** 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.T17-003 to read as follows:

#### § 165.T17-003 Security Zone; Waters of the Seventeenth Coast Guard District.

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

*Designated on Scene Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander or local Captain of the Port (COTP), as defined in 33 CFR part 3, subpart 3.85, to act on his or her behalf.

*Escorted high capacity passenger vessel* means a high capacity passenger vessel that is accompanied by one or more Coast Guard assets or Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) State law enforcement asset displaying the applicable agency markings and or equipment associated with the agency.

*State law enforcement officers* means any State government law enforcement officer who has authority to enforce State criminal laws.

*High Capacity Passenger Vessel* means a passenger vessel greater than

100 feet in length that is authorized to carry more than 500 passengers for hire.

(b) *Location.* The following area is a security zone: 100-yard radius around escorted high capacity passenger vessels in the navigable waters of the Seventeenth Coast Guard District as defined in 33 CFR 3.85-1, from surface to bottom.

(c) *Regulations.* (1) No vessel may approach within 100 yards of a moving, escorted high capacity passenger vessel within the navigable waters of the Seventeenth Coast Guard District, unless traveling at the minimum speed necessary to navigate safely.

(2) Moored or anchored vessels, which are overtaken by this moving zone, must remain stationary at their location until the escorted vessel maneuvers at least 100 yards past.

(3) The local Captain of the Port may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(4) Persons desiring to transit within 100 yards of a moving, escorted high capacity passenger vessel in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz), VHF channel 13 (156.650 MHz).

(5) If permission is granted to transit within 100 yards of an escorted high capacity passenger vessel, all persons and vessels must comply with the instructions of the District Commander, Captain of the Port or his or her designated representative.

Dated: July 21, 2005.

**James C. Olson,**

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

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD09-05-101]

RIN 1625-AA00

#### Safety Zone; Rohrbach's Ontario Regatta, Hamlin Beach State Park, Monroe County, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone

restricting all vessel traffic on Lake Ontario, Near Hamlin Beach State Park, Monroe County, New York, due to Catamaran Sailboat Races, August 6, 2005 and August 7, 2005. This temporary safety zone is necessary to ensure the safety of both the participants and spectators of the sail boat races.

**DATES:** This rule is effective from 10 a.m. (local) on August 6, 2005 through 12 p.m. (local) on August 7, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD09-05-101] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203, between 8 a.m. (local) and 4 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Craig A. Wyatt, U. S. Coast Guard Marine Safety Office Buffalo (716) 843-9570.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. 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**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

#### Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and participants. Establishing a temporary safety zone to control vessel movement throughout a portion of Lake Ontario will help minimize risks associated with Catamaran boat races. Upon completion of the races, the Coast Guard Captain of the Port Buffalo or the designated on-scene representative will inform waterway users that the temporary safety zone is no longer being enforced via the Broadcast Notice to Mariners.

#### Discussion of Rule

The temporary safety zone will encompass all waters and adjacent