

ACTION: Cancellation of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on a notice of proposed rulemaking under section 446(b) of the Internal Revenue Code relating to the inclusion into income or deduction of a contingent nonperiodic payment provided for under a notional principal contract (NPC).

DATES: The public hearing originally scheduled for May 25, 2004, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622-4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the *Federal Register* on Thursday, February 26, 2004 (69 FR 8886), announced that a public hearing was scheduled for May 25, 2004, at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 446(e) of the Internal Revenue Code.

The public comment period for these regulations expired on May 4, 2004. The notice of proposed rulemaking instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, May 7, 2004, no one has requested to speak. Therefore, the public hearing scheduled for May 25, 2004, is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04-11016 Filed 5-13-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13-04-019]

RIN 1625-AA00

Security Zones; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two security zones in Commencement Bay, WA. These security zones are needed to protect Department of Defense assets and military cargo in Puget Sound, Washington. This proposed rule, when enforced by the Captain of the Port Puget Sound, would provide for the regulation of vessel traffic in the vicinity of military cargo loading facilities in the navigable waters of the United States.

DATES: Comments and related material must reach the Coast Guard on or before June 14, 2004.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134. Marine Safety Office Puget Sound maintains the public docket [CGD13-04-019] 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 Marine Safety Office Puget Sound between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTjg T. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217-6232. For specific information concerning enforcement of this rule, call Marine Safety Office Puget Sound at (206) 217-6200 or (800) 688-6664.

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 (CGD13-04-019), 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 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 now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Puget Sound 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

Hostile entities continue to operate with the intent to harm U.S. National Security by attacking or sabotaging national security assets. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. 67 FR 58317 ((Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)); 67 FR 59447 ((Sept. 20, 2002) continuing national emergency with respect to persons who commit, threaten to commit or support terrorism); 68 FR 55189 ((Sept. 22, 2003 (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)).

The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations). Moreover, the ongoing hostilities in Afghanistan and Iraq make it prudent for U.S. ports and waterways 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.

The Coast Guard, through this proposed rule, intends to assist the Department of Defense and protect vital national security assets, in waters of Puget Sound. This proposed rule would establish security zones and notification requirements that will exclude persons and vessels from these zones during military cargo loading and unloading operations. Entry into these zones will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Proposed Rule

During the past 6 months, the Captain of the Port has issued four temporary final rules establishing security zones in Commencement Bay, Washington. (CGD13-04-024 issued April 29, 2004; 69 FR 24513, May 4, 2004, item 13-04-006; 69 FR 4237, 4239, January 29, 2004; items 13-03-037 and 13-03-039)

These temporary final rules have been established to protect facilities used by

vessels to load and/or unload military cargo. Moreover, these temporary zones have differed in size and description. This proposed rule would establish a permanent, uniform, security zone, which would control vessel movement in and around the Blair and Sitcum Waterways, Commencement Bay, WA. However, the Captain of the Port will only enforce the proposed rule after issuing a notice of enforcement. Upon notice of suspension of enforcement, all persons and vessels are authorized to enter, move within and exit these security zones. This proposed rule is deemed necessary to protect vital national security assets and military cargo.

The Coast Guard proposes establishing a security zone in the Blair Waterway, Commencement Bay, WA, which includes all waters enclosed by the following points: 47°16'57" N, 122°24'39" W, which is approximately the beginning of Pier No. 23 (also known as the Army pier); then northwesterly to 47°17'05" N, 122°24'52" W, which is the end of the Pier No. 23 (Army pier); then southwesterly to 47°16'33" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southeasterly to 47°16'42" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northeasterly to the northwestern end of Pier No. 1; then southeasterly along the shoreline of the Blair Waterway to the Blair Waterway turning basin; then along the shoreline around the Blair Waterway turning basin; then northwesterly along the shoreline of the Blair Waterway to the Commencement Bay Directional Light (light list number 17159); then northeasterly along the shoreline to the point of origin. [Datum: NAD 1983].

This proposed rule would also establish a security zone in the Sitcum Waterway, Commencement Bay, WA which includes all waters enclosed by the following points: 47°16'42" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northwesterly to 47°16'33" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southwesterly to 47°16'23" N, 122°25'36" W; then southeasterly to 47°16'10" N, 122°25'27" W, which is the northwestern corner of Pier No. 2; then extending northeasterly to 47°16'13" N, 122°25'13" W; then extending southeasterly along the shoreline of the Sitcum Waterway; then northeasterly along the shoreline at the terminus of the Sitcum Waterway and then northwesterly along the shoreline of the

Sitcum Waterway; then northeasterly along the shoreline of Pier No. 5 to the point of origin. [Datum: NAD 1983].

Finally, this proposed rule would also establish requirements for all vessels to obtain permission of the COTP or the COTP's designated representative, including the Vessel Traffic Service Seattle (VTS), to enter the Blair Waterway or Sitcum Waterway security zones when they are being enforced. To allow time for the request to be considered, vessels 20 meters or greater in length should seek permission 4 hours in advance, and vessels less than 20 meters should seek permission to enter at least 1 hour in advance. Also, vessels must obtain permission from the COTP or a Designated Representative to move within or exit these security zones when they are being enforced.

This proposed rule would be enforced from time to time by the Captain of the Port Puget Sound for such times before, during, and after military cargo loadings and unloadings as he or she deems necessary to prevent damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States. The Captain of the Port Puget Sound will cause notice of enforcement or suspension of enforcement of this security zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including Marine Safety Office Puget Sound's Internet Web page located at <http://www.uscg.mil/d13/units/msopuget>. In addition, Marine Safety Office Puget Sound maintains a telephone line that is manned 24 hours a day, 7 days a week. The public can contact Marine Safety Office Puget Sound at (206) 217-6002 or (800) 688-6664 to obtain information concerning enforcement of this rule.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 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. Although this proposed rule would restrict access to the regulated area, the effect of this proposed rule would not be significant.

This expectation is based on the fact that the regulated area established by the rule would encompass a limited area in the Blair and Sitcum Waterways, Commencement Bay, WA. In addition, temporary final rules established for past cargo loading and unloading operations have only lasted from a few days to over a week in duration. Hence, the Coast Guard expects that enforcement periods under of this proposed rule will be of similar duration. Further, Coast Guard forces will actively monitor and enforce the Blair Waterway and Sitcum Waterway security zones and are authorized by the Captain of the Port to grant authorization to vessels to enter these waterways. In addition, in certain circumstances VTS may grant authorization to enter, move within or depart these waterways. In other words, those vessels or persons who may be impacted by this rule may request permission to enter, move within or depart these security zones. Finally, the Coast Guard will cause a notice of suspension of enforcement to be published when cargo loading or unloading operations have concluded. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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 Blair and/or Sitcum Waterways.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual security zones are limited in size; (ii) designated representatives of the Captain of the Port may authorize access to the security zone; (iii) security zones for any given operation will effect a given geographical location for a limited time; (iv) the Coast Guard will make

notifications via maritime advisories so mariners can adjust their plans accordingly and (v) the Coast Guard will cause a notice of suspension of enforcement to be published when cargo loading or unloading operations have concluded.

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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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).

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

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. We have determined that these security zones and fishing rights protection need not be incompatible. We have also determined that this Proposed 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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.

Environment

The Coast Guard's preliminary review indicates this proposed rule is categorically excluded from further environmental documentation under figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination will be prepared and be available in the docket for inspection and copying where indicated under **ADDRESSES**. All standard environmental measures remain in effect.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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 § 165.1321 to read as follows:

§ 165.1321 Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA.

(a) *Notice of enforcement or suspension of enforcement.* The Captain of the Port Puget Sound will enforce the security zones established by this section only upon notice. Captain of the Port Puget Sound will cause notice of the enforcement of these security zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal**

Register as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Puget Sound will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of these security zones is suspended.

(b) *Definitions.* The following definitions apply to this section:

Designated Representative means those persons designated by the Captain of the Port Puget Sound to monitor these security zones, permit entry into these zones, give legally enforceable orders to persons or vessels within these zones and take other actions authorized by the Captain of the Port Puget Sound. Persons authorized in paragraph (g) to enforce this section and Vessel Traffic Service Puget Sound (VTS) are Designated Representatives.

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.

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

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Washington Law Enforcement Officer means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) *Security zone.* The following areas are security zones:

(1) *Blair Waterway Security Zone:* The Security Zone in the Blair waterway, Commencement Bay, WA, includes all waters enclosed by a line connecting the following points: 47°16'57" N, 122°24'39" W, which is approximately the beginning of Pier No. 23 (also known as the Army pier); then northwesterly to 47°17'05" N, 122°24'52" W, which is the end of the Pier No. 23 (Army pier); then southwesterly to 47°16'33" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southeasterly to 47°16'42" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northeasterly to the northwestern end of Pier No. 1; then southeasterly along the shoreline of the Blair Waterway to the Blair Waterway turning basin; then along the shoreline

around the Blair Waterway turning basin; then northwesterly along the shoreline of the Blair Waterway to the Commencement Bay Directional Light (light list number 17159); then northeasterly along the shoreline to the point of origin. [Datum: NAD 1983].

(2) *Sitcum Waterway Security Zone:* The Security Zone in the Sitcum waterway, Commencement Bay, WA, includes all waters enclosed by a line connecting the following points: 47°16'42" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northwesterly to 47°16'33" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southwesterly to 47°16'23" N, 122°25'36" W; then southeasterly to 47°16'10" N, 122°25'27" W, which is the northwestern corner of Pier No. 2; then extending northeasterly to 47°16'13" N, 122°25'13" W; then extending southeasterly along the shoreline of the Sitcum Waterway; then northeasterly along the shoreline at the terminus of the Sitcum Waterway and then northwesterly along the shoreline of the Sitcum Waterway; then northeasterly along the shoreline of Pier No. 5 to the point of origin. [Datum: NAD 1983].

(d) *Obtaining permission to enter, move within, or exit the security zones:* All vessels must obtain permission from the COTP or a Designated Representative to enter, move within, or exit the security zones established in this section when these security zones are enforced. Vessels 20 meters or greater in length should seek permission from the COTP or a Designated Representative at least 4 hours in advance. Vessels less than 20 meters in length should seek permission at least 1 hour in advance. VTS Puget Sound may be reached on VHF channel 14.

(e) *Compliance.* Upon notice of enforcement by the Captain of the Port Puget Sound, the Coast Guard will enforce these security zones in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit these security zones.

(f) *Regulations.* Under the general regulations in 33 CFR part 165 subpart D, this section applies to any vessel or person in the navigable waters of the United States to which this section applies. No person or vessel may enter the security zones established in this section unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted permission to enter the security zone shall obey all lawful orders or

directions of the Captain of the Port or his designated representatives. All vessels shall operate at the minimum speed necessary to maintain a safe course.

(g) *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, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other Federal, State or local agencies in enforcing this section pursuant to 33 CFR 6.04–11.

(h) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(i) *Waiver.* For any vessel, the Captain of the Port Puget Sound may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: May 7, 2004.

Danny Ellis,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–10997 Filed 5–13–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 120–0063; FRL–7661–2]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a full approval of some revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) and a limited approval/limited disapproval of other revisions to the Arizona SIP. These revisions concern sulfur dioxide (SO₂) emissions from existing primary copper smelters. We are proposing