

**(b) Regulations.**

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(3) In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Chicago to transit the safety zone. Approval in such cases will be case-by-case. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via Channel 16, VHF-FM.

(c) Captain of the Port Chicago will announce the exact time and location of the annual events listed in this regulation by Notice of Implementation, Broadcast Local Notice to Mariners, or any other means deemed appropriate.

Dated: May 5, 2003.

**Raymond E. Seebald,**

*Captain, U.S. Coast Guard, Captain of the Port, Chicago.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Western Alaska 03-002]

RIN 1625-AA00

#### **Security Zone: Protection of Alaska Marine Highway System (AMHS) Vessel M/V Kennicott in Western Alaska Waters**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** Increases in the Coast Guard's maritime security posture necessitate establishing temporary regulations for the security of Alaska Marine Highway System (AMHS) vessels in the navigable waters of Western Alaska. This security zone will provide for the regulation of vessel traffic in the vicinity of AMHS

vessels in the navigable waters of Western Alaska.

**DATES:** This temporary rule is effective April 28, 2003, until September 19, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket COTP Anchorage 03-012 and are available for inspection or copying at Marine Safety Office Anchorage, 510 L Street, Suite 100, Anchorage, Alaska 99501, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** CDR Robert Forgit, Marine Safety Office Anchorage, 510 L Street, Suite 100, Anchorage, Alaska 99501, (907) 271-6771.

#### **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) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard AMHS vessels from sabotage, other subversive acts, or accidents. If normal notice and comment procedures were followed, this rule would not become effective soon enough to provide immediate protection to AMHS vessels from the threats posed by hostile entities and would compromise the vital national interest in protecting maritime transportation and commerce. The security zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for AMHS vessels. For these reasons, following normal rulemaking procedures in this case would be impracticable, unnecessary, and contrary to the public interest.

##### **Background and Purpose**

The Coast Guard, through this action, intends to assist AMHS vessels by establishing a security zone to exclude persons and vessels from the immediate vicinity. Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. 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)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by 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)).

Entry into this zone 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 Rule**

This rule controls vessel movement in a regulated area surrounding AMHS high capacity passenger vessels that are in service. For the purpose of this regulation, the AMHS vessel is the M/V Kennicott. All vessels authorized to be within 100 yards of this vessel shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the on-scene official patrol or AMHS vessel master. No vessel, except a public vessel (defined below), is allowed within 100 yards of the subject vessel, unless authorized by the on-scene official patrol or AMHS vessel master. Vessels requesting to pass within 100 yards of this vessel shall contact the on-scene official patrol or AMHS vessel master on VHF-FM channel 16 or 13. The on-scene official patrol or AMHS vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of the subject AMHS vessels in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of passing this AMHS vessel. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

##### **Regulatory Evaluation**

This 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 paragraph 10e of the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) Individual AMHS vessel security zones are limited in size; (ii) the on-scene official patrol or AMHS vessel master may authorize access to the AMHS vessel security zone; (iii) the AMHS vessel security zone for any given transiting AMHS vessel will effect a given geographical location for a limited time; and (iv) 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 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 rule may 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 AMHS vessels in the navigable waters of the United States.

This temporary regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual AMHS vessel security zones are limited in size; (ii) the on-scene official patrol or AMHS vessel master may authorize access to the AMHS vessel security zone; (iii) the AMHS vessel security zone for any given transiting AMHS vessel will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

#### **Assistance for Small Entities**

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 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 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This rule will 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 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 may disproportionately affect children.

#### **Indian Tribal Governments**

The Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of the Temporary Final Rule to accommodate the special needs of mariners in the vicinity of AMHS vessels and the Coast Guard’s commitment to working with the Tribes, we have determined that AMHS vessel security and fishing rights protection need not be incompatible and therefore have determined that this Temporary Final 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.

#### **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. 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 analyzed this proposed 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. A final "Environmental Analysis Check List" and a "Categorical Exclusion Determination" (CED) will be available in the docket where indicated under **ADDRESSES**.

#### 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 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From APR 28, 2003, until SEPT 19, 2003, § 165.T17-005 is added to read as follows:

#### § 165.T17-005 Security Zone Regulations, Alaska Marine Highway System Vessel Security Zone, Western Alaska, Captain of the Port Zone.

(a) The following definitions apply to this section:

*Alaska Law Enforcement Officer* means any General Authority Alaska Peace Officer, Limited Authority Alaska Peace Officer, or Specially Commissioned Alaska Peace Officer as defined by Alaska State laws.

*Alaska Marine Highway System High Capacity Passenger Vessel* ("AMHS vessel") includes the following vessel; M/V Kennicott.

*AMHS Vessel Security Zone* is a regulated area of land and water, established by this section, surrounding AMHS vessels for a 100 yard radius, that is necessary to provide for the security of these vessels.

*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 2.05-25 and includes those waters described in 33 U.S.C. 1222(5) and 50 U.S.C. 195(2).

*Navigation Rules* means the Navigation Rules, International-Inland.

*Official Patrol* means those persons designated by the Captain of the Port to

monitor an AMHS 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 Captain of the Port. Persons authorized to enforce this section are designated as the Official Patrol.

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

*Western Alaska Captain of the Port Zone* means the area of land and water described in 33 CFR 3.85-15.

(b) This section applies to any vessel or person in or adjacent to the navigable waters of the United States in or adjacent to the State of Alaska west of 148° 26' longitude and within the Western Alaska Captain of the Port Zone.

(c) An AMHS vessel security zone is established and exists for a 100 yard radius around AMHS vessels at all times when located in the navigable waters of the United States in or adjacent to the State of Alaska and within the Western Alaska Captain of the Port Zone, whether the AMHS vessel is underway, anchored, or moored.

(d) The Navigation Rules shall apply at all times within an AMHS vessel security zone.

(e) All vessels within an AMHS vessel security zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or AMHS vessel master. No vessel or person located in or adjacent to the navigable waters of the United States to which this section applies is allowed within 100 yards of an AMHS vessel, unless authorized by the on-scene official patrol or AMHS vessel master.

(f) To request authorization to operate within 100 yards of an AMHS vessel, contact the on-scene official patrol or AMHS vessel master on VHF-FM channel 16 or 13.

(g) When conditions permit, the on-scene official patrol or AMHS vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of an AMHS vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of a passing AMHS vessel; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored AMHS vessel with minimal delay consistent with security.

(h) Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraphs (b), (c), (e), (f), (g), (i), and (j) of this section.

(i) Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. When immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effect control in the vicinity of an AMHS vessel, any Federal Law Enforcement Officer or Alaska State Law Enforcement Officer may enforce the rules contained in this regulation 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 rule.

(j) The Captain of the Port Western Alaska may waive any of the requirements of this section for any vessel 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 port security, safety or environmental safety.

Dated: April 21, 2003.

**Ronald J. Morris,**

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[PA203-4207a; FRL-7494-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO<sub>x</sub> RACT Determinations for Lafayette College

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Lafayette College, Easton Campus, a major source of nitrogen oxides (NO<sub>x</sub>) located in Northampton County, Pennsylvania. EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).