

Signed: July 6, 2005.

John J. Manfreda,
Administrator.

Approved: September 14, 2005.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and
Tariff Policy).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD17-05-002]

RIN 1625-AA87

Security Zone; High Capacity Passenger Vessels and Alaska Marine Highway System Vessels in Alaska

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of
proposed rulemaking; request for
comments.

SUMMARY: The Coast Guard is revising its proposed rule published March 9, 2005, to establish permanent moving security zones around all escorted High Capacity Passenger Vessels ("HCPV") and escorted Alaska Marine Highway System Vessels ("AMHS vessels") during their transit in the navigable waters of the Seventeenth Coast Guard District. The 250-yard speed restriction zone, the 25-yard security zone around moored and anchored vessels, and the waiver request process in the notice of proposed rulemaking (NPRM) have been eliminated. The Coast Guard has revised the proposed security zones prohibiting any vessel from entering within 100 yards of an escorted HCPV or escorted AMHS vessel while in transit. These security zones are necessary to mitigate potential terrorist acts and enhance public and maritime safety and security. Permission to enter these security zones may be granted by the designated on-scene representative.

DATES: Comments and related material must reach the Coast Guard on or before December 30, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD17-05-002 and are available for inspection or copying at United States Coast Guard, District 17 (dpi), 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 (dpi), 709

West 9th Street, Juneau, AK 99801,
(907) 463-2821.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 provisions for a 250-yard speed restriction zone, a 25-yard security zone around moored and anchored vessels, and a waiver request process. We are removing those three provisions from the proposed rule in this supplemental NPRM.

The revised proposed security zones are limited to High Capacity Passenger Vessels (HCPV) and Alaska Marine Highway System Vessels (AMHS) vessels during transit in the waters of the Seventeenth Coast Guard District. These security zones will only apply to HCPV and AMHS vessels transiting under an escort as defined in this SNPRM. These permanent security zones have been carefully designed to minimally impact the public while providing protections for HCPV and AMHS vessels.

Requests for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and addresses, identifying this rulemaking (CGD17-05-002) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comment should enclose a stamped, self-addressed postcard or envelope.

Comments on this supplemental NPRM must reach the Coast Guard on or before December 30, 2005. The Coast Guard will consider all comments received during the comment period and may change this proposed rule in view of the comments.

The Coast Guard has not scheduled a public hearing at this time. You may request a public hearing by writing to the Seventeenth Coast Guard District at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial to the rulemaking. If it is determined that an opportunity for oral presentation will aid this rulemaking, the Coast Guard

will schedule a public hearing at a time and place announced in a separate notice published 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 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 subway bombings 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); and 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, the Coast Guard has determined the need for additional security measures during their transit. A security zone is a tool available to the Coast Guard that may be used to control maritime traffic operating in the vicinity of these vessels. The District Commander has made a determination that it is necessary to establish a security zone around HCPV and AMHS vessels that are escorted to safeguard people, vessels and maritime traffic.

Discussion of Comments and Changes

The Coast Guard received a total of 147 documents containing comments to the proposed rule. The documents included letters from commercial fishermen, commercial fishing organizations, individual float plane operators, float plane organizations, harbor masters, cruise line agencies, charter vessels, pilot organizations, the Alaska Marine Highway System, government officials and other concerned mariners. Responses to these comments and changes made in the proposed rule are discussed in the following paragraphs.

Numerous comments suggested that the security zones be in place only at heightened Maritime Security (MARSEC) levels. The Coast Guard disagrees. MARSEC Level 1 is the level at which minimum, appropriate protective security measures shall be maintained. At MARSEC Level 2, additional measures shall be maintained as a result of a heightened risk. At MARSEC Level 3, a transportation security incident is probable or imminent. The Coast Guard maintains that security zones around HCPV and AMHS vessels are a minimum appropriate security measure for MARSEC Level 1.

The most frequent comments were focused on the unique geography of the tight, constricted waterways and ports in Alaska. One comment suggested that the zone be in effect only when a Coast Guard asset is on-scene. The NPRM indicated the zone would be in effect at all times in the waters of District 17. The Coast Guard recognizes that Alaska's waterways are narrow and are shared with a myriad of maritime professionals as well as recreational boaters. The Coast Guard has revised the proposed rule by having these HCPV and AMHS security zones in effect only when there is a Coast Guard asset on-scene.

Several comments expressed concern for the time associated with gaining permission to enter the security zone. Other comments expressed concern on who would retain the master lists of "waiver/exempt" vessels and the difficulty of maintaining an accurate Maritime Domain Awareness status of vessels on waivers. Based on these comments, the Coast Guard has reassessed its permission-to-enter proposal and has decided to revise the proposed rule and amends the rule by removing the waiver process and replacing it with the requirement that permission to enter the security zone be given by the designated on-scene

representative on VHF channel 16 or VHF Channel 13 on a case-by-case basis.

Numerous comments addressed the 250-yard speed zone restriction and the minimum speed necessary to maintain a safe course. The Coast Guard recognizes that in order for float planes to safely take off and land, they will likely be at speeds between 40 and 60 knots. Numerous Southeast Alaskan ports would also see an increase in maritime traffic outside the 250 yard speed restriction zone, particularly Tongass Narrows and Gastineau Channel. This increase in traffic would likely have a detrimental effect on the safe navigation of maritime traffic. Accordingly, the Coast Guard has revised the proposed rule and eliminated the 250-yard speed zone restriction.

Numerous comments addressed certain areas where a 100-yard security zone would create navigational situations that result in vessels coming into close proximity of HCPV and AMHS vessels in places like Snow Pass, Point Arden, Sunny Point, Tongass Narrows and Eastern Channel. While the Coast Guard recognizes that these areas are navigationally narrow, the Coast Guard will require vessels to remain 100 yards away from HCPV or AMHS vessels while those vessels are escorted by the designated on-scene representative. Speed and course adjustments must be made early enough to allow for sufficient sea room for the safe passage of the HCPV or AMHS vessels. Additionally, Rule 9 of the International Rules of the Road requires vessels less than 20 meters in length to not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway. Vessels anchored in a designated area will be permitted to remain at anchor until the HCPV or AMHS Ferry has passed. As noted previously, the Coast Guard has revised the proposed rule so that security zones would be in effect only when there is a Coast Guard asset or designated representative on-scene.

Numerous comments opposed the 25-yard security zone around moored and anchored vessels. Comments stated the rule would prevent access to fuel docks, processing facilities, and other marine-related businesses along with access to various Southeast Alaskan small boat harbors such as the Hansen, Ryus, Daly floats, Casey Moran float, Thomas Basin, Juneau fish processing facilities, Marine Park lightering dock, Juneau Intermediate Vessel Float, Skagway Small Boat Harbor, and Whittier Small Boat Harbor. Another comment was received about the need for city officials to access municipal utilities, water, wastewater, telephone and electric

utilities located under the pier and the only way to access those utilities was taking a skiff on the water and going under the pier. Based on these comments, the Coast Guard has revised the proposed rule to eliminate the 25-yard security zone for moored and anchored vessels. The security concerns for moored and anchored vessels will be addressed in a separate notice of proposed rulemaking (NPRM).

Several comments addressed the applicability of the rule to fishing vessels with gear in the water, fishing vessels in transit, and fish tenders. For the purposes of clarifying this particular section of the NPRM, the Coast Guard proposes revising the security zone by adding language to the proposed rule that "vessels defined as engaged in fishing as per COLREGS Rule 3(d), are exempt from this rule. Rule (3)(d) states that the term 'Vessel engaged in fishing' means any vessel fishing with nets, lines, trawls or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability." Therefore, fish tenders, processors, and trollers are not exempt from this rule.

Some comments addressed the need to have the widest dissemination of the final rule as possible, including public service announcements, walking the docks, fliers, and Broadcasts Notice to Mariners (BNM). The Coast Guard proposes to broadcast the final rule published in the **Federal Register** via BNM, fliers, and announcements.

Several comments requested a public hearing, and others requested that the comment period be extended. The Coast Guard re-opened the public comment period and published a second 30-day notice and comment period which expired on May 27, 2005 (70 FR 21702, April 27, 2005). The Coast Guard may hold a public hearing, if appropriate, prior to adoption of a final rule. Based on all the comments received to date, there has been an adequate forum and sufficient time for the public to express its concerns, and the comment period on the revised proposed rule has been re-opened until December 30, 2005.

One comment was received expressing concern that the availability of Search and Rescue (SAR) assets would be jeopardized due to enforcement of the security zones. The Coast Guard disagrees. The SAR Coordinator for District 17 would retain the ability to direct Coast Guard assets to respond to SAR cases and would not decrease the Coast Guard's abilities to respond in a safe and efficient manner.

Some comments were received expressing concern about the potential

punishment for violators of the security zone. If the proposed rule is made effective, the Coast Guard would be able to seek both criminal penalties, civil penalties, or both against violators of these HCPV and AMHS security zones.

One comment expressed concern that if the Coast Guard is unwilling to back the rule up with deadly force, the rule cannot serve its stated purpose and will only serve to restrict the reasonable freedoms of law-abiding citizens.

Another comment expressed concern that a 100-yard buffer will not stop a terrorist with explosives from blowing-up a cruise ship. The Coast Guard appreciates these comments and concerns and disagrees based upon clear policy guidance designed to prepare Coast Guard members on how to react appropriately when confronted with a use of force situation.

Discussion of Proposed Rule

This proposed rule would establish permanent 100-yard security zones around HCPV and AMHS vessels that are being escorted by a Coast Guard surface, air, or by other state or federal law enforcement agency designated by the Captain of the Port (COTP) during their transit through the Seventeenth Coast Guard District. Persons desiring to transit within 100 yards of an escorted HCPV or AMHS vessel 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 HCPV or AMHS vessels. 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 HCPV or AMHS vessel approaches within 100 yards of the stationary vessel unless the designated on scene representative has granted approval for the stationary vessel to do otherwise.

Regulatory Evaluation

Although one public comment stated that this action constitutes a significant regulatory action, the Coast Guard disagrees based on the relatively small size of the limited access area around each ship and the minimal amount of time that vessels will be restricted when the zone is being enforced. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the on scene designated representatives. 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This permanent security zone only applies to HCPV and AMHS vessels that are transiting with an escort. It does not apply when the vessels are moored or anchored. 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 (dpi), 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 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 Security Zones; Waters of the Seventeenth Coast Guard District.

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

Alaska Marine Highway System vessel ("AMHS vessel") means the M/V AURORA, M/V CHENEGA, M/V COLUMBIA, M/V FAIRWEATHER, M/V KENNICOTT, M/V LECONTE, M/V LITUYA, M/V MALASPINA, M/V MATANUSKA, M/V TAKU, and the M/V TUSTUMENA.

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, or other Federal, State or local law enforcement agency personnel designated by the COTP.

Escorted HCPV or AMHS vessel means a HCPV or AMHS 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, Federal or local law enforcement assets displaying the applicable agency markings and or equipment associated with the agency.

Federal Law Enforcement Officer means any federal government law enforcement officer who has authority to enforce federal criminal laws.

High Capacity Passenger Vessel ("HCPV") means a passenger vessel greater than 100 feet in length that is authorized to carry more than 500 passengers for hire.

State law enforcement Officer means any State or local government law enforcement officer who has authority to enforce State or local criminal laws.

(b) *Location.* The following areas are security zones: All waters within 100 yards around escorted High Capacity Passenger Vessels or escorted Alaska Marine Highway System 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 an escorted HCPV or escorted AMHS vessel during their transits within the navigable waters of the Seventeenth Coast Guard District.

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

(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 HCPV or AMHS 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) to receive permission.

(5) If permission is granted to transit within 100 yards of an escorted HCPV or AMHS vessel, all persons and vessels must comply with the instructions of the designated on scene representative.

Dated: October 18, 2005.

James C. Olson,

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

[FR Doc. 05–21576 Filed 10–28–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0056; FRL–7990–2]

RIN 2060–AN32

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of reconsideration of final rule; proposed amendments.

SUMMARY: On September 13, 2004, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters. In this action, EPA is proposing a limited number of amendments to the NESHAP. In response to a petition for reconsideration, EPA is proposing and