

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 would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This 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 would 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

### 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. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard 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. In § 165.910, revise paragraph (a)(5) to read as follows:

**§ 165.910 Security Zones; Captain of the Port Chicago, Zone, Lake Michigan.**

(a) \* \* \*

(5) *Hammond Intake Crib*. All navigable waters bounded by the arc of a circle with a 100-yard radius with its center in approximate position 41°42'15" N, 087°29'49" W (NAD 83).

\* \* \* \* \*

Dated: November 16, 2004.

**D.S. Fish,**

*Commander, U.S. Coast Guard, Acting Captain of the Port.*

[FR Doc. 04–27099 Filed 12–9–04; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[CGD13–04–040]

RIN 1625–AA87

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a security zone in Budd Inlet, Olympia, WA to protect Department of Defense assets and military cargo in Puget Sound, Washington. This security zone, when enforced by the Captain of the Port Puget Sound, will regulate traffic in the vicinity of military cargo loading operations in the navigable waters of the United States.

**DATES:** This rule is effective December 10, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–04–040 and are available for inspection or copying at Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134 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, Seattle, WA, (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:

#### Regulatory Information

On October 12, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Protection of

Military Cargo, Captain of the Port Zone Puget Sound, WA” in the **Federal Register** (69 FR 60600). No written comments were received by the Coast Guard regarding this proposed rule. A public hearing was not requested and none was held.

The Coast Guard finds good cause exists to make this rule effective less than 30 days after publication. This rule establishes security zones during military cargo loading and unloading operations. The Captain of the Port Puget Sound deems it necessary to make this rule effective upon publication in the **Federal Register** given the unpredictable schedule of these military cargo loading and unloading operations and because of the vital importance of these operations to national security. In fact, since October 12, 2004, the Captain of the Port Puget Sound has issued two additional temporary final rules establishing security zones in Budd Inlet, West Bay, Olympia, Washington (CGD13-04-41 signed November 15, 2004; CGD13-04-042 signed November 30, 2004). Moreover, the Captain of the Port Puget Sound will only enforce this final rule after issuing a notice of enforcement.

#### 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 rule, intends to assist the Department of Defense protect vital national security assets, in the waters of Puget Sound. This rule adds Budd Inlet as a permanent security zone in 33 CFR 165.1321. The security zones permanently established in 33 CFR 165.1321 exclude persons and vessels from these zones during military cargo loading and unloading operations and set forth the procedures for obtaining permission to enter, move within or exit these security zones. Likewise, entry into the zone described in this rule 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 Comments and Changes

No comments were received by the Coast Guard as a result of the request for comments in our NPRM.

#### 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 rule would restrict access to the regulated area, the effect of this 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 Budd Inlet, Olympia, 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 rule will be of similar duration. Further, Coast Guard forces will actively monitor and enforce the Budd Inlet security zone and are authorized by the Captain of the Port to grant authorization to vessels to enter this waterway. In addition, in certain circumstances VTS may grant authorization to enter, move within or depart this waterway. In other words, those vessels or persons who may be impacted by this rule may request permission to enter, move within or depart this security zone. 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 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 would not have a significant economic impact on a substantial number of small entities.

This 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 Budd Inlet.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The security zone is limited in size; (ii) designated representatives of the Captain of the Port may authorize access to the security zone; (iii) security zone for any given operation will effect the 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 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 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 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This 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 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 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 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 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 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 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 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. In § 165.1321, add paragraph(c)(3) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(3) *Budd Inlet Security Zone:* The Security Zone in Budd Inlet, West Bay, Olympia WA includes all waters enclosed by a line connecting the following points: 47°03'12" N, 122°25'21" W, which is approximately the northwestern end of the fence line enclosing Berth 1 at Port of Olympia; then northerly to 47°03'15" N, 122°54'21" W, which is the approximate 300 feet north along the shoreline; then westerly to 47°03'15" N, 122°54'26" W; then southerly to 47°03'06" N, 122°54'26" W; then southeasterly to 47°03'03" N, 122°54'20" W, which is approximately the end of the T-shaped pier; then north to 47°03'01" N, 122°54'21" W, which is approximately the southwestern corner of berth 1; then northerly along the shoreline to the point of origin. [Datum: NAD 1983].

\* \* \* \* \*

Dated: December 1, 2004.

**J.A. Stagliano,**

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

[FR Doc. 04-27213 Filed 12-8-04; 8:54 am]

**BILLING CODE 4910-15-P**