

will be considered before we make a final decision on whether the rule should be categorically excluded 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 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 § 165.503 to read as follows:

#### § 165.503 Security Zone; Captain of the Port Hampton Roads Zone.

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

*Certain dangerous cargo or CDC* means a material defined as CDC in 33 CFR 160.204.

*Designated Representative* of the Captain of the Port is any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port (COTP), Hampton Roads, Virginia to act on his or her behalf.

*Passenger vessel* means a vessel defined as a passenger vessel in 46 CFR part 70.

(b) *Location.* All navigable waters of the Captain of the Port Hampton Roads zone (defined in 33 CFR 3.25–10) within 500 yards around a passenger vessel or vessel carrying a CDC, while the passenger vessel or vessel carrying CDC is transiting, moored or anchored.

(c) *Regulations.* (1) No vessel may approach within 500 yards of a passenger vessel or vessel carrying a CDC within the Captain of the Port Hampton Roads zone, unless traveling at the minimum speed necessary to navigate safely.

(2) Under § 165.33, no vessel or person may approach within 100 yards of a passenger vessel or vessel carrying a CDC within the Captain of the Port Hampton Roads zone, unless authorized by the COTP Hampton Roads or his or her designated representative.

(3) The COTP Hampton Roads 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) A security zone in effect around a moving vessel will be enforced by a law enforcement vessel. A security zone in effect around a moored vessel will be enforced either by a law enforcement agent shoreside or by a law enforcement vessel waterside, or both.

(5) Persons desiring to transit the area of the security zone within 100 yards of a passenger vessel or vessel carrying a CDC must contact the COTP Hampton Roads on VHF–FM channel 16 (156.8 MHz) or telephone number (757) 668–5555 or (757) 484–8192 to seek permission to transit the area. All persons and vessels must comply with the instructions of the COTP or the COTP's designated representative.

(d) *Enforcement.* The COTP will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, or municipal law enforcement agency to assist in the enforcement of the regulation.

Dated: April 15, 2004.

**Robert R. O'Brien, Jr.,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD05–04–057]

RIN 1625–AA00

#### Security Zone; Potomac River, Washington, DC and Arlington and Fairfax Counties, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary security zone, May 27 through May 30, 2004, encompassing the waters of the Potomac River in order to safeguard a large number of high-ranking officials and spectators from terrorist acts and incidents. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the

Coast Guard Captain of the Port Baltimore.

**DATES:** Comments and related material must reach the Coast Guard on or before May 19, 2004.

**ADDRESSES:** You may mail comments and related material to Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Ports and Waterways Department, Baltimore, Maryland, 21226–1791. The Ports and Waterways Department of Coast Guard Sector Baltimore maintains the public docket 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 the Ports and Waterways Department of Coast Guard Sector Baltimore between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald L. Houck, at Coast Guard Sector Baltimore, Waterways Management Branch, at telephone number (410) 576–2674.

#### 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 (CGD05–04–057), 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. If as we anticipate—because of the closeness of the event, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so in the final rule, as required by 5 U.S.C. 553(d)(3).

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Ports and Waterways Department of Coast Guard Sector Baltimore 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**

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing loss of life and destruction of property using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93 in Pennsylvania, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism, (67 FR 59447, September 20, 2002). The ongoing hostilities in Afghanistan and conflict in Iraq have made 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 Captain of the Port is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a large gathering of spectators and high-ranking officials at or near the National Mall in Washington, DC would have. This temporary security zone applies to all waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, between the Long Railroad Bridge to the Arlington Memorial Bridge and all waters in between, including the waters of the Georgetown Channel Tidal Basin from May 27 through May 30, 2004. Vessels underway at the time this

security zone is implemented will immediately proceed out of the zone. We will issue Broadcast Notices to Mariners to further publicize the security zone and any revisions to the zone. This security zone is issued under authority contained in 50 U.S.C. 191 and 33 U.S.C. 1226.

Except for Public vessels and vessels at berth, mooring or at anchor, this rule temporarily requires all vessels in the designated security zone as defined by this rule to depart the security zone. However, the COTP may, in his discretion grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

### **Discussion of Proposed Rule**

On Saturday, May 29, 2004, nearly 59 years after the end of World War II, the National World War II Memorial will be dedicated in Washington, DC at 2 p.m. local time. The Memorial Day weekend celebration on the National Mall will culminate an 11-year effort to honor America's World War II generation. The official dedication celebration will span 4 days, and includes several "Tribute to a Generation" dedication events. The security zone will be in effect from May 27 through May 30, 2004.

### **Regulatory Evaluation**

This proposed 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 the regulatory policies and procedures of DHS is unnecessary.

The operational restrictions of the security zone are tailored to provide the minimal interruption of vessel operations necessary to provide immediate, improved security for persons, vessels, and the waters of the Potomac River in Washington, DC. Additionally, this security zone is temporary in nature and vessels and facilities can appeal to the Captain of the Port for a waiver of the requirements of the security zone. Any hardships experienced by persons or vessels are outweighed by the national interest in protecting high ranking officials and the

public at large from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

### **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 rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate or transit on the Georgetown Channel of the Potomac River, from the surface to the bottom, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge complex) to the Arlington Memorial Bridge and all waters in between, including the waters of the Georgetown Channel Tidal Basin. This security zone will not have a significant economic impact on a substantial number of small entities because vessels with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone.

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 (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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald L. Houck, at Coast Guard Sector Baltimore, Waterways

Management Branch, at telephone number (410) 576-2674.

### 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 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 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

This proposed 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

### 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

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.

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 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:

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2. Add § 165.T05-057 to read as follows:

### § 165.T05-057 Security Zone; Potomac River, Washington, DC and Arlington and Fairfax Counties, Virginia.

(a) *Location.* The following area is a security zone: All waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge complex) to the Arlington Memorial Bridge and all waters in between, including the waters of the Georgetown Channel Tidal Basin.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland. Except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone are to depart the security zone. However, the COTP may, in his discretion grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 410-576-2693 or on VHF channel 16 (157.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section is effective from 4 a.m. local time on May 27, 2004, through 10 p.m. local time on May 30, 2004.

Dated: April 2, 2004.

**Curtis A. Springer,**

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.*

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