

DISTRICT QUARTERLY REPORT—4TH QUARTER 2002—Continued

District docket	Location	Type	Effective date
13-02-012	ELLIOTT BAY, WA	SAFETY ZONE	11/02/2002
13-02-017	ELLIOTT BAY, WA	SAFETY ZONE	10/26/2002
12-02-019	PUGET SOUND, WA	SECURITY ZONE	11/11/2002

REGULATIONS NOT ON PREVIOUS 3RD QUARTERLY REPORT

District/COTP	Location	Type	Effective date
COTP REGULATIONS FOR 3RD QUARTER			
MOBILE 02-020	GULFPORT, MISSISSIPPI, PASCAGOULA, MS, AND MOBILE, AL.	SAFETY ZONE	09/25/02

[FR Doc. 03-10423 Filed 4-25-03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[CGD01-03-001]

RIN 1625-AA00 [Formerly RIN 2115-AA97]

Security Zones; Passenger Vessels, Portland, ME, Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around high capacity passenger vessels, including international ferries, located in the Portland, Maine, Captain of the Port zone. These security zones are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels will be prohibited from entering these security zones without the permission of the Captain of the Port, Portland, Maine.

DATES: This rule is effective April 15, 2003.

ADDRESSES: There were no comments or material received from the public. However, documents indicated in this preamble as being available in the docket, are part of docket CGD01-03-001 and are available for inspection or copying at Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant R.F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780-3251.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On February 27, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone" in the **Federal Register** (68 FR 9039). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The operation of international ferries and the arrival of passenger vessels begin in mid-April in the Portland, Maine, Captain of the Port zone. Due to heightened Homeland Security Advisory System threat levels, which have changed since this NPRM was first published, and the current conflict in Iraq, which has recently erupted, we feel it is necessary and prudent to enact this regulation on April 15, 2003 at the commencement of the international ferry and passenger vessel season, in order to properly protect these vessels, passengers, crew and others in the maritime community from possible terrorist actions.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing operations in the Middle East have made it prudent for U.S. ports 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. Due to these concerns, security zones around passenger vessels are necessary to

ensure the safety and protection of the passengers aboard. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the "Magnuson Act"), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

On October 7, 2002, a temporary final rule (TFR) entitled "Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone" was published in the **Federal Register** (67 FR 62373). That TFR, effective from September 25, 2002, until December 1, 2002, addressed concerns that vessels operating near passenger vessels present possible platforms from which individuals may gain unauthorized access to these passenger vessels or launch terrorist attacks upon said vessels. The TFR was issued to safeguard human life, vessels, and waterfront facilities from sabotage or terrorist acts.

To address the aforementioned concerns, the Coast Guard is establishing permanent security zones to prevent vessels or persons from accessing the navigable waters around and under passenger vessels in the Portland, Maine, Captain of the Port zone. Due to the continued heightened security concerns, this rule is necessary to provide for the safety of the port, the vessels, passengers and crew on the vessels, as well as to ensure passenger

vessels are not used as possible platforms for terrorist attacks.

Discussion of Comments and Changes

We received no public comments subsequent to the publishing of the proposed rule for these security zones. However, one change has been made to the rule as published in the notice of proposed rulemaking. Under "Definition", we have modified the phrase "and for which passengers are embarked or disembarked" to read, "and for which passengers are embarked, disembarked or pay a port call." We feel this clarification more accurately reflects the fact that this rule applies to any of the defined passenger vessels that are entering a port in the Portland, Maine, Captain Of the Port zone, whether embarking new passengers, disembarking current passengers or just visiting the port.

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).

This rule is not significant for the following reasons: (a) The security zones will encompass only relatively small portions of the Captain of the Port, Portland, Maine zone around the transiting passenger vessels, allowing vessels to safely navigate around the zones without delay; and (b) vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

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.

For reasons enumerated in the Regulatory Evaluation section above, 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. There is no indication the previous rule

was burdensome on the maritime public. No letters commenting on the previous rule were received from the public.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Lieutenant R. F. Pigeon of Marine Safety Office Portland, Maine was available to answer any questions regarding this rule. No requests for assistance were received.

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 (1-888-734-3427).

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 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

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.

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

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, since implementation of

this action will not result in any: (1) Significant cumulative impacts on the human environment; (2) Substantial controversy or substantial change to existing environmental conditions; (3) Impacts on properties protected under the National Historic Preservation Act or (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment. A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

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. 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. Add § 165.105 to read as follows:

§ 165.105 Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone.

(a) *Definition*. "Passenger vessel" as used in this section means a passenger vessel over 100 gross tons authorized to carry more than 500 passengers for hire making voyages, any part of which is on the high seas, and for which passengers are embarked, disembarked or pay a port call, in the Portland, Maine, Captain of the Port zone as delineated in 33 CFR 3.05–15.

(b) *Location*. The following areas are security zones:

(1) All navigable waters within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, within a 100-yard radius of any passenger vessel that is anchored, moored, or in the process of mooring.

(2) All navigable waters, within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, extending 200 yards ahead, and 100 yards aside and astern of any passenger vessel that is underway.

(c) *Regulations*. (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port, Portland,

Maine (COTP) or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the COTP or his designated representative.

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

Dated: April 9, 2003.

Wyman W. Briggs,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–028]

RIN 1625-AA00

Security Zones; Escorted Vessel Transits, Portland, ME, Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones for vessels designated by the Captain of the Port (COTP) Portland, Maine, to be in need of a Coast Guard escort for security reasons while they are transiting the COTP Portland, Maine Zone. These security zones are needed to safeguard the public, designated vessels and their crews, other vessels and their crews, and the ports and infrastructure within the Portland, Maine, COTP zone from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into or movement within these zones, without the express permission of the Captain of

the Port, Portland, Maine or his authorized patrol representative, is strictly prohibited.

DATES: This rule is effective from 12 a.m. (noon) EDT on April 15, 2003 until 12 a.m. (noon) EDT on October 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–03–028 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Portland, 27 Pearl Street, Portland, Maine, 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Ronald F. Pigeon at Marine Safety Office Portland, (207) 780–3251.

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), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the heightened Homeland Security Advisory System threat level and the current conflict in Iraq we feel it is necessary and prudent to enact this regulation immediately to safeguard the public, the port, facilities, and the maritime community and to ensure the security of escorted vessel transits in the Portland, Maine, COTP zone. Any delay would leave escorted vessels, their crews, the port, facilities, and the maritime community with inadequate security measures to meet potential threats.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the heightened Homeland Security Advisory System threat level and the current conflict in Iraq, the Coast Guard has expanded its use of vessel boardings and escorts to better safeguard the public, the port facilities, and the maritime community from possible terrorist activity. This regulation is needed immediately to assist the Coast Guard in providing adequate protection around these escorted vessels while transiting in the Portland, Maine, COTP zone.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC on September 11, 2001, the ongoing conflict in Iraq and the continuing concern for future terrorist acts against the United States, we have established security zones to safeguard escorted vessels transiting in the Portland, Maine, COTP zone. For purposes of this