

significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will continue to open on signal for vessel traffic provided the thirty-minute notice is given.

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.

#### 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 effect a taking of private property or otherwise have taking implications under E.O. 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 may 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. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, 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 (3)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From July 1, 2004 through May 1, 2005, § 117.793 is temporarily amended by adding a new paragraph (d) to read as follows:

#### § 117.793 Hutchinson River (Eastchester Creek).

\* \* \* \* \*

(d) The draw of the of the Pelham Parkway (Shore Road) Bridge, at mile 0.4, shall open on signal; except that from July 1, 2004 through May 1, 2005, between 6 a.m. to 7 p.m. each day, the draw shall open after at least a thirty-minute advance notice is given by calling the New York City Highway Radio (Hotline) Room.

Dated: April 22, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 04–10114 Filed 5–3–04; 8:45 am]

BILLING CODE 4910–15–P

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD05–04–067]

RIN 1625–AA00

#### Security Zone; Captain of the Port Hampton Roads Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishing security zones around passenger vessels and vessels carrying Certain Dangerous Cargo (CDC) while they are in the navigable waters of the Captain of the Port (COTP) Hampton Roads zone. These security zones would mitigate potential terrorist acts and would enhance the public and maritime safety and security. These proposed security zones would prohibit entry into or movement within 100-yards of passenger vessels and vessels carrying CDC.

**DATES:** Comments and related material must reach the Coast Guard on or before June 3, 2004.

**ADDRESSES:** You may mail comments and related material to the Coast Guard Marine Safety Office Hampton Roads, 200 Granby Street, Suite 700, Norfolk, Virginia 23510. The Waterways Management Branch of the Marine Safety Office 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 USCG Marine Safety Office Hampton Roads between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Mike Dolan, Chief of Waterways Management, USCG Marine Safety Office Hampton Roads, at (757) 668-5590.

#### 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 (CGD05-04-067), 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.

##### Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commanding Officer, U.S. Coast Guard Marine Safety Office Hampton Roads at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public hearing 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 terrorists' desire and ability to utilize multiple means in different geographic areas to successfully carry out their mission.

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. The October 2002 attack on a tank vessel, MV LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate the maritime terrorism threat. These attacks manifest 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) 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 U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-06 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States.

The ongoing hostilities in Afghanistan and 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.

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 Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. The security zones are established around all passenger vessels or vessels carrying CDC that are anchored, moored, or underway within the Captain of the Port Hampton Roads zone. A security zone is a tool available to the Coast Guard that may be used to control vessel traffic operating in the vicinity of passenger vessels and vessels carrying CDC.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish a 500-yard security zone around passenger vessels and vessels carrying CDC while they are in the COTP Hampton Roads zone, as defined in 33 CFR 3.25-10.

The security zone would assist the Coast Guard by preventing other vessels or persons from engaging in terrorist actions against these vessels by controlling the movement of persons and other vessels from the surface to the bottom of the water in a 500-yard radius around these vessels. Vessels traveling within 500 yards of the subject vessels would be required to slow to the minimum safe speed that would allow them to navigate safely and avoid a collision, allision, or grounding. All vessels and persons would be prohibited from entering within 100 yards of the subject vessels without permission from the COTP Hampton Roads or his or her designated representative.

The Coast Guard believes the establishment of these security zones is necessary for the following reasons:

1. *Passenger Vessels.* These are vessels of at least 100 gross tons defined as a passenger vessel in 46 CFR 70.10-1, which specifies the number of passengers-for-hire for both international and other voyages. The establishment of a security zone would increase the protection afforded to these vessels and their passengers.

2. *Vessels Carrying CDC.* CDC is defined in 33 CFR 160.204. These cargoes include division 1.1 and 1.2 explosives, permitted oxidizing material or blasting agents, highway route controlled or fissile radioactive material, poisonous gases, and certain other toxic or volatile materials. By the nature of these materials, an explosion or release of this type of cargo could have serious impact on the general public.

The COTP would notify the maritime and general public by marine information broadcast of the periods during which individual security zones would be enforced. While in effect around a moving vessel, each zone would be enforced by law enforcement agency vessels. While in effect around a moored vessel, each zone would be enforced by a designated law enforcement agent shoreside or by a law enforcement agency vessel waterside. The COTP may enlist the aid and cooperation of any Federal, state, county, or municipal law enforcement agency to assist in the enforcement of the regulation.

## 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. This finding is based on the relatively small percentage of ships that would fall within the applicability of the regulation, the relatively small size of the limited access area around each ship, the minimal amount of time that vessels will be restricted in course or speed when the zone is being enforced, and the ease with which vessels may transit around the affected area. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the COTP Hampton Roads or his designated representatives.

## 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 proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit in the security zone near a passenger vessel or a vessel that is carrying CDC.

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 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 Lieutenant Mike Dolan at Coast Guard Marine Safety Office Hampton Roads, Waterways Management Branch, at telephone number (757) 668–5590.

## 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. 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 M16475.1D, 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 because this rule establishes a security zone.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES. Comments on this section

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.*

[FR Doc. 04–10115 Filed 5–3–04; 8:45 am]

BILLING CODE 4910–15–P

#### 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