

**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:** Second supplemental notice of proposed rulemaking; request for comments.

**SUMMARY:** The Coast Guard is revising its first supplemental notice of proposed rule rulemaking published October 31, 2005, establishing 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 to exempt from the provisions of this rule all commercial fishing vessels, as defined by applicable United States Code, only while actively engaged in fishing.

**DATES:** Comments and related material must reach the Coast Guard on or before March 30, 2006.

**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.

Additionally, we published a Supplemental Notice of Proposed Rulemaking (SNPRM) entitled "Security Zone; High Capacity Passenger Vessels

and Alaska Marine Highway System Vessels in Alaska" in the **Federal Register** (70 FR 62261, October 31, 2005), docket number CGD17-05-002 which removed those three provisions from the proposed rule. 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 the SNPRM. These permanent security zones have been carefully designed to minimally impact the public while providing protections for HCPV and AMHS vessels.

This Second Supplemental Notice of Proposed Rulemaking (SSNPRM) exempts all commercial fishing vessels, as defined by 46 U.S.C. 2101(11a), only while actively engaged in fishing.

**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 March 30, 2006. 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**

For the supplemental notice of proposed rulemaking dated 31 October 2005, the Coast Guard received 2 documents containing comments to the proposed rule. Both documents were from parties representing the commercial fishing vessel trolling fleet. Their comments requested that commercial fishing vessels, while engaged in trolling, be exempt from the

rule because they also claim to have restricted maneuverability as any other 'vessel engaged in fishing' as defined by the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (72COLREGS), Rule 3. Our responses to these comments are discussed in the following paragraphs.

The Coast Guard does not agree that all vessels engaged in trolling are necessarily restricted in their ability to maneuver so as to avoid collision as required under Rule 8 of the COLREGS. However, after careful consideration and research, the Coast Guard does accept the notion that a vessel engaged in commercial trolling does not pose any greater security risk than any other commercial fishing vessel engaged in fishing. Therefore, the Coast Guard has redefined the rule to exempt 'all commercial fishing vessels' as defined by 46 U.S.C. 2101(11a) while actively engaged in fishing. This includes any vessel that commercially engages in the catching, taking or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking or harvesting of fish. Therefore, all commercial fishing vessels while actively engaged in fishing within the meaning of 46 U.S.C. 2101(11a) are exempted from the provisions of this rule.

One commenter expressed fear that the 25-yard moored and 100-yard in-transit restriction would be more harmful to the fishing industry than preventing someone from actually causing harm to a HCPV. We believe these concerns were raised and adequately addressed in the Small Entities section of the SNPRM (70 FR 62263 (October 31, 2005)) where we certified under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities, and in the Discussion of Comments and Changes section of the SNPRM (70 FR 62262 (October 31, 2005)) where we disagreed based upon clear policy guidance designed to prepare Coast Guard members on how to react appropriately when confronted with a use of force situation. We do not believe there is a need to be more prescriptive in this area.

Additionally, this commenter expressed concern on the practicality of knowing when the security zone would actually go into effect. We believe this concern was raised and adequately addressed in the Discussion of Comments and Changes section of the SNPRM (70 FR 62262 (October 31, 2005)) where we described the security zone going into effect only when there is a Coast Guard asset on-scene, and in

the Regulatory Text of the SNPRM (70 FR 62264 (October 31, 2005)) where we described that 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. We do not believe there is a need to be more prescriptive in this area.

Finally, the commenter requested clarification regarding vessel speeds, what is necessary in order gain permission to enter the security zone, and regulation enforcement and penalties. We believe these concerns were raised and adequately addressed in the Discussion of Comments and Changes section of the SNPRM (70 FR 62262 (October 31, 2005)) where we described that 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. We also addressed this issue in the Discussion of Proposed Rule section of the SNPRM (70 FR 62263 (October 31, 2005)) where we described that persons desiring to transit within 100 yards of an escorted HCPV or AHMS vessel must first contact the designated on-scene representative on VHF channel 16 or 13 and obtain permission. Finally, in the Discussion of Comments and Changes section of the SNPRM (70 FR 62262–62263 (October 31, 2005)), we described the possibility of the Coast Guard seeking both criminal penalties, civil penalties, or both against violators of the HCPV and AMHS security zones. The specific penalties are in 33 CFR part 6, 33 U.S.C. 1221 et seq., and 50 U.S.C 191 et seq. We do not believe there is a need to be more prescriptive in this area.

#### Discussion of Proposed Rule

The Coast Guard is revising its first supplemental notice of proposed rule rulemaking exempt from the provisions of this rule all commercial fishing vessels, as defined by applicable United States Code, only while actively engaged in fishing. 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 AHMS 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 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.

#### 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.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed 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 (Public Law 104-121), we offered to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 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 proposed 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 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 expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### Taking of Private Property

This proposed 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 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 proposed 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 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.

#### 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.

#### 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 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.

#### 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—

(1) *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.

(2) *Alaska Marine Highway System vessel ("AMHS vessel")* means any vessel owned or operated by the Alaska Marine Highway System, including, but not limited to: 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.

(3) *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 Officers designated by the COTP.

(4) *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:

(i) Coast Guard surface or air asset displaying the Coast Guard insignia.

(ii) State, Federal or local law enforcement assets displaying the applicable agency markings and or equipment associated with the agency.

(5) *State Law Enforcement Officer* means any State or local government law enforcement officer who has authority to enforce State or local criminal laws.

(6) *Federal Law Enforcement Officer* means any Federal government law enforcement officer who has authority to enforce Federal 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) or 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.

(6) All commercial fishing vessels as defined by 46 U.S.C. 2101(11a) while actively engaged in fishing are exempted from the provisions of this rule.

Dated: February 10, 2006.

**James C. Olson,**

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

[FR Doc. E6-2614 Filed 2-27-06; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2006-0086; FRL-8037-8]

#### Approval and Promulgation of Implementation Plans; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa for the purpose of establishing exemptions for indoor sources of air pollution that are not directly vented to the outside but have emissions that leave the building through doors, vents or other means. This revision also clarifies that the permitting exemptions do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. The state has determined that air pollution emissions from this equipment are negligible and these exemptions are likely to result in no significant impact on human health or the environment.

**DATES:** Comments on this proposed action must be received in writing by March 30, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0086 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: [Hamilton.heather@epa.gov](mailto:Hamilton.heather@epa.gov).

3. Mail: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's

normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule that is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

#### FOR FURTHER INFORMATION CONTACT:

Heather Hamilton at (913) 551-7039, or by e-mail at [Hamilton.heather@epa.gov](mailto:Hamilton.heather@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule that is located in the rules section of this **Federal Register**.

Dated: February 17, 2006.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. 06-1787 Filed 2-27-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2005-AZ-0008; FRL-8022-6]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.