

event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233.

2. In § 100.501, suspend line No. 57 and add line No. 59 in the Table to read as follows:

§ 100.501 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District.

\* \* \* \* \*

COAST GUARD SECTOR NORTH CAROLINA—COTP ZONE

Table with 5 columns: Number, Date, Event, Sponsor, Location. Row 59: September 17, 2011, Wilmington YMCA Triathlon, Wilmington YMCA, The waters of, and adjacent to, Wrightsville Channel from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12'18" N, longitude 077°48'10" W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12'51" N, longitude 77°48'53" W.

\* \* \* \* \*

Dated: July 18, 2011.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011-19020 Filed 7-26-11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0318]

RIN 1625-AA87

Security Zone; Escorted Vessels in Captain of the Port Ohio Valley Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to implement fixed and moving security zones around High Capacity Passenger Vessels (HCPVs) and vessels carrying Certain Dangerous Cargo (CDC) while they are being escorted in the navigable waters of the Captain of the Port (COTP), Sector Ohio Valley Zone. As used in this section, HCPVs are defined as any commercial vessel carrying 500 or more passengers and CDC is defined in 33 CFR 160.204. The proposed security zones would control the movement of vessels within 50 yards of a HCPV or vessel carrying a CDC. These security zones would mitigate potential terrorist acts and would enhance public and maritime safety and security.

DATES: Comments and related material must be received by the Coast Guard on or before August 26, 2011.

ADDRESSES: You may submit comments identified by docket number USCG-2011-0318 using any one of the following methods:

(1) Federal eRulemaking Portal: http://www.regulations.gov.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LCDR Derek Schade, Sector Ohio Valley Response Department, Coast Guard; telephone 502-779-5413, e-mail derek.t.schade@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to http://www.regulations.gov and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0318), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via http://www.regulations.gov) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via http://www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to http://www.regulations.gov, click on the "submit a comment" box, which will

then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2011-0318" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-0318" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one during the comment period. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will extend the comment period and hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at a public meeting, contact LCDR Derek Schade at the telephone number or e-

mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

#### Basis and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels; to enhance security, the Captain of the Port, Ohio Valley proposes to establish security zones around certain vessels. These security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature.

Due to the potential for terrorist attacks, this proposed rule would create fixed and moving security zones around HCPVs and vessels carrying CDCs while they are transiting under escort on the navigable waters within the COTP Ohio Valley zone. By limiting access to these areas, the Coast Guard is reducing potential methods of attack on these vessels, and potential use of the vessels to launch attacks on waterfront facilities and adjacent population centers located within the Captain of the Port, Ohio Valley zone. Vessels having a need to enter these security zones must obtain permission from the Captain of the Port or his designated representative prior to entry.

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted terrorists' desire and ability to use 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; and 75 FR 55661, September 13, 2010); Continuation of the National Emergency With Respect

To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002; and 75 FR 57159, September 20, 2010).

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 Advisory 02-07 was cancelled and replaced by MARAD Advisory 05-01, which advises operators of U.S. flagged vessels that hostile actions against merchant vessels are present and growing. Finally, in recent months, hostilities in Afghanistan and other areas have escalated, making 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. Subversive activity towards HCPVs and vessels carrying CDCs is of paramount concern to the Coast Guard. Therefore, in order to strengthen security and further control access, the COTP, Sector Ohio Valley has decided to implement a security zone around all HCPVs and vessels carrying CDCs that are being escorted within the COTP Ohio Valley zone, as described in 33 CFR 3.40-65.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish a 50-yard security zone around HCPVs and vessels carrying CDCs while they are being escorted in the Captain of the Port Ohio Valley zone, as defined in 33 CFR 3.40-65.

This rule would establish security zones that control the movement of persons and other vessels from the surface to the bottom of the water in a 50-yard radius around escorted vessels. Vessels traveling within 50 yards of these escorted vessels would be required to slow to the minimum speed necessary to navigate safely. All vessels or persons would be prohibited from entering within a 25-yard radius around these escorted vessels without the permission from the COTP Sector Ohio Valley or his or her designated representative.

For the purposes of this rule, a designated representative of the COTP Ohio Valley includes commissioned, warrant, or petty officers of the U.S. Coast Guard; or Federal, State, and local law enforcement officers designated by or assisting the COTP Ohio Valley.

As used in this section, an *escorted vessel* is defined as a HCPV or vessel carrying CDC that is accompanied by one or more Coast Guard assets or other Federal, State, or local law enforcement assets clearly identified by lights, vessel markings, or with agency insignia.

In all cases, the COTP would notify the maritime and general public by marine information broadcast of the periods during which individual security zones will be enforced.

### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### Regulatory Planning and Review

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.

This rule does not pose a significant regulatory impact. The limited geographic area impacted by the security zones would not restrict the movement or routine operation of commercial or recreational vessels through the waterways within the COTP Ohio Valley zone.

### 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 within 50 yards of escorted vessels. This

rule would not have a significant impact on a substantial number of small entities because the security zones are limited in size, in most cases leaving ample space for vessels to navigate around them. The zones would not significantly impact commercial and passenger vessel traffic patterns, and mariners would be notified of the zones via broadcast notice to mariners. Where such space is not available and security conditions permit, the COTP would attempt to provide flexibility for individual vessels to transit through the zones as needed.

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 using one of the four methods specified under **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 process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 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 (adjusted for inflation) 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 cause 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.

### 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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing security zones around escorted vessels and would not have a significant environmental impact. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. The categorical exclusion determination is also available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 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 § 165.318 to read as follows:

#### § 165.318 Security Zone; Captain of the Port Ohio Valley Zone.

(a) *Definitions.* The following definitions apply to this section:

*Captain of the Port or COTP* means the same as described in 33 CFR 3.01-1.

*Designated representative of the Captain of the Port* means any U.S. Coast Guard commissioned, warrant, and petty officers; and Federal, State, and local law enforcement officers designated by or assisting the COTP in the enforcement of the security zone.

*High Capacity Passenger Vessel or HCPV* means any commercial vessel carrying 500 or more passengers.

*Certain Dangerous Cargo or CDC* means the same as defined in 33 CFR 160.

*Escorted vessel* means a HCPV or vessel carrying a CDC that is accompanied by one or more U.S. Coast Guard assets or other Federal, State, or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia.

*Minimum safe speed* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

- (1) On a plane;
- (2) In the process of coming up onto or coming off a plane; or
- (3) Creating an excessive wake.

(b) *Location.* All navigable waters, as defined within Captain of the Port,

Sector Ohio Valley zone, 33 CFR 3.40-65, within 50 yards around an escorted vessel while transiting, moored, or anchored.

(c) *Periods of enforcement.* The COTP will enforce this section during escorts of HCPVs and vessels carrying a CDC. The COTP may enlist the aid and cooperation of any Federal, State, county, or municipal law enforcement agency to assist in the enforcement of this regulation. The COTP Ohio Valley may notify the maritime and general public by broadcast notices to mariners, local notices to mariners, or marine safety information broadcasts of the periods during which individual security zones have been activated.

(d) *Regulations.* (1) Unless otherwise specified in this section, the general regulations for security zones contained in § 165.33 of this part apply to this section.

(2) No vessel may approach within 50-yards of an escorted vessel within the Captain of the Port, Sector Ohio Valley zone, unless traveling at the minimum safe speed necessary to navigate safely.

(3) No vessel or person may approach within 25 yards of an escorted vessel within the Captain of the Port Ohio Valley zone, unless authorized by the COTP Ohio Valley or his or her designated representative.

(4) Persons desiring to transit the area of the security zone within 25 yards of an escorted vessel must contact the COTP Ohio Valley on VHF-FM channel 16 (156.8 MHz) or telephone number 502-779-5300 to seek permission. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the orders of the COTP or a designated representative.

Dated: July 6, 2011.

**L.W. Hewett,**

*Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.*

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