

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[LANT AREA-01-001]

RIN 2115-AG23

Protection of Naval Vessels**AGENCY:** Coast Guard, DOT.**ACTION:** Temporary final rule.

SUMMARY: Following terrorist attacks in New York and Washington, DC., the Coast Guard is establishing temporary regulations for the safety or security of U.S. naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. Naval Vessel Protection Zones will provide for the regulation of vessel traffic in the vicinity of U.S. naval vessels in the navigable waters of the United States.

DATES: This rule is effective from September 14, 2001 to June 15, 2002.

ADDRESSES: You may mail comments and related material to Commander (Amr), Coast Guard Atlantic Area, 431 Crawford Street, Portsmouth, VA 23704-5004. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket LANT AREA 01-001 and are available for inspection or copying at 431 Crawford Street, Portsmouth, VA, room 416 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CDR Chris Doane, Commander (Amr), Coast Guard Atlantic Area, 431 Crawford Street, Portsmouth, VA 23704-5004; telephone number (757) 398-6372.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

In order to protect the interests of national security, the Coast Guard is promulgating temporary regulations to provide for the safety and security of U.S. naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of naval vessel protection zones is a function directly involved in, and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Also, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective immediately. This temporary regulation of short duration is necessary to provide for the immediate security and safety of U.S. naval vessels following the terrorist attacks in New York City and Washington, DC. To delay the effective date would be impracticable and contrary to the public interest.

Background and Purpose

These zones are necessary to provide for the safety and security of United States naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91.

Discussion of Rule

This rule, for safety and security concerns, controls vessel movement in a regulated area surrounding U.S. naval vessels. U.S. naval vessel means any vessel owned, operated, chartered, or leased by the U.S. Navy; and any vessel under the operational control of the U.S. Navy or a unified commander. All vessels within 500 yards of a U.S. naval vessel shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the official patrol (a Coast Guard commissioned, warrant or petty officer; or the Commanding Officer of a U.S. naval vessel or his or her designee). No vessel is allowed within 100 yards of a U.S. naval vessel, unless authorized by the official patrol. Vessels requesting to pass within 100 yards of a U.S. naval vessel shall contact the official patrol on VHF-FM channel 16. The official patrol may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of a U.S. naval vessel in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of passing naval vessels.

Violations of these regulations are punishable as a class D felony (imprisonment for not more than 6 years and a fine of not more than \$250,000) and in rem liability against the vessel.

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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) Individual naval vessel protection zones are limited in size; (ii) The official patrol may authorize access to the naval vessel protection zone; (iii) the naval vessel protection zone for any given transiting naval vessel will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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.

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.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of U.S. naval vessels in the navigable waters of the United States.

This temporary regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual naval vessel protection zones are limited in size; (ii) The official patrol may authorize access to the naval vessel protection zone; (iii) the naval vessel protection zone for any given transiting naval vessel will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

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).

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 will 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 does 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 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. 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

The Coast Guard's preliminary review indicates this temporary rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.IC. The environmental analysis and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary naval vessel protection zone, and will be available in the docket. This temporary rule ensures the safety and security of U.S. naval vessels. All standard environmental measures remain in effect. The Categorical Exclusion Determination will be made available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Protection of naval vessels, 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 subpart G reads as follows:

Authority: 14 U.S.C. 91 and 633; 49 CFR 1.45.

2. Subpart G is added to part 165 to read as follows:

Subpart G—Protection of Naval Vessels

Sec.

165.2000	Purpose.
165.2015	Definitions.
165.2020	Enforcement authority.
165.2025	Atlantic area.

Subpart G—Protection of Naval Vessels

§ 165.2000 Purpose.

This subpart establishes the geographic parameters of naval vessel protection zones surrounding U.S. naval vessels in the navigable waters of the United States. This subpart also establishes when the U.S. Navy will take enforcement action in accordance with the statutory guidelines of 14 U.S.C. 91. Nothing in the rules and regulations contained in this subpart shall relieve any vessel, including U.S. naval vessels, from the observance of the Navigation Rules. The rules and regulations contained in this subpart supplement, but do not replace or supersede, any other regulation pertaining to the safety or security of U.S. naval vessels.

§ 165.2015 Definitions.

The following definitions apply to this subpart:

Atlantic Area means that area described in 33 CFR 3.04–1 Atlantic Area.

Naval defensive sea area means those areas described in 32 CFR part 761.

Naval vessel protection zone is a 500-yard regulated area of water surrounding U.S. naval vessels, which is necessary to provide for the safety or security of U.S. naval vessels.

Navigable waters of the United States means those waters as defined in 33 CFR 2.05–25.

Navigation rules means the Navigation Rules, International-Inland.

Official patrol means a Coast Guard commissioned, warrant or petty officer; or the Commanding Officer of a U.S. naval vessel or his or her designee.

Pacific Area means that area described in 33 CFR 3.04–3 Pacific Area.

Restricted area means those areas set out in 33 CFR part 334.

U.S. naval vessel means any vessel owned, operated, chartered, or leased by the U.S. Navy; and any vessel under the operational control of the U.S. Navy or a unified commander.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels.

§ 165.2020 Enforcement authority.

(a) *Coast Guard.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules and regulations contained in this subpart.

(b) *Senior naval officer present in command.* In the navigable waters of the United States, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effective control in the vicinity of United States naval vessels, the senior naval officer present in command is responsible for the enforcement of the rules and regulations contained in this subpart to ensure the safety and security of his or her command.

Note to paragraph (b): The senior naval officer present in command will normally be the Commanding Officer of a U.S. naval vessel.

§ 165.2025 Atlantic area.

(a) This section applies to any vessel or person in the navigable waters of the United States within the boundaries of the U.S. Coast Guard Atlantic Area, which includes the First, Fifth, Seventh, Eighth and Ninth U.S. Coast Guard Districts.

Note to paragraph (a): The boundaries of the U.S. Coast Guard Atlantic Area and the First, Fifth, Seventh, Eighth and Ninth U.S. Coast Guard Districts are set out in 33 CFR part 3.

(b) A naval vessel protection zone exists around U.S. naval vessels at all times in the navigable waters of the United States, whether the U.S. naval vessel is underway, anchored, or moored, except when the naval vessel is moored within a restricted area or within a naval defensive sea area.

(c) The Navigation Rules shall apply at all times within a naval vessel protection zone.

(d) When within a naval vessel protection zone all vessels shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the official patrol. No vessel or person is allowed within 100 yards of a U.S. naval vessel, unless authorized by the official patrol.

(e) To request authorization to operate within 100 yards of a U.S. naval vessel, contact the official patrol on VHF–FM channel 16.

(f) When conditions permit, the official patrol may:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a U.S. naval vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of passing naval vessels.

Dated: September 14, 2001.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Atlantic Area.

[FR Doc. 01–23705 Filed 9–19–01; 8:45 am]

BILLING CODE 4910–15–U

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Coast Guard

33 CFR Part 165

[PAC AREA–01–001]

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DATES: This temporary rule is effective from September 14, 2001, to June 15, 2002.

ADDRESSES: You may mail comments and related material to Commander (Poft/Pmt), Coast Guard Pacific Area, Coast Guard Island, Alameda, CA 94501. Comments and material received from the public, as well as documents

indicated in this preamble as being available in the docket, are part of docket PAC AREA 01–001 and are available for inspection or copying at Commander (Poft/Pmt), Coast Guard Island, Alameda, CA, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CDR Joe Billy, Commander (Poft), or CDR Steve Danscuk, Commander (Pmt), Coast Guard Pacific Area, Coast Guard Island, Alameda, CA 94501; telephone numbers (510) 437–3505 and (510) 437–2943 respectively.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In order to protect the interests of national security, the Coast Guard is promulgating temporary regulations to provide for the safety and security of U.S. naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of naval vessel protection zones is a function directly involved in, and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

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Background and Purpose

These zones are necessary to provide for the safety and security of United States naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. The zones established by these regulations control the movement and anchorage of vessels near U.S. naval vessels, and are intended to prevent an attack on a U.S. naval vessel, like what happened to USS COLE in Aden, Yemen on October 12, 2000.

Discussion of Rule

This rule, for safety and security concerns, controls vessel movement in a regulated area surrounding U.S. naval