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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-16

CGD01-04-120

RIN 1625-AA87

Security Zone; Portland, ME, Captain of the Port Zone,
Presidential Visit.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone in the navigable waters of the Captain of the Port (COTP), Portland, Maine zone for the visit of the President of the United States, (the President). The temporary moving security zone is necessary to protect the President and his entourage, members of the public and the surrounding area from potential sabotage or other potentially subversive acts, accidents, or other hazards of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine during the specified closure period.

DATES: This rule is effective from 8 a.m. EDT on September 17, 2004 until 8 p.m. EDT on September 20, 2004.

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ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01-04-120 and are available for inspection or copying at Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101 between the hours of 8 a.m. EDT and 4 p.m. EDT, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign J. B. Bleacher, Port Operations Department, Marine Safety Office Portland at (207) 780-3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the sensitive and unpredictable nature of the President's schedule, the Coast Guard received insufficient notice to publish a proposed rule in advance of the effective date of this temporary moving security zone. The delay inherent in the NPRM process would be contrary to the public interest, as immediate action is needed to protect the President and his entourage from potential sabotage or other potentially subversive acts, accidents, or other hazards of a similar nature.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. This security zone is intended to protect the President and his entourage from potential sabotage or other potentially subversive acts, accidents, or other hazards of a similar nature. Any delay in the effective date of this rule is impractical and contrary to the public interest.

Background and Purpose

The President will be visiting the Bush family residence located at Walkers Point near Kennebunkport, Maine during the period of time between September 17, 2004 and September 20, 2004. The Coast Guard is establishing the following area as a temporary security zone during the President's visit: all navigable waters of the COTP, Portland, Maine zone, extending from the surface to the sea floor, within 500-yards of the President while transiting the zone between September 17, 2004 and September 20, 2004. This temporary security zone is necessary to protect the President, his entourage, other public officials, members of the public and the surrounding area from potential sabotage, other potentially subversive acts, accidents, or other hazards of a similar nature while the President is on or near the water. The Captain of the Port, Portland, Maine, will notify the maritime community of

the periods during which the security zone will be enforced. Broadcast notifications will also advise the maritime community of the boundaries of the zone.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port or the designated Coast Guard on-scene representative. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than \$250,000 for an individual and \$500,000 for an organization), *in rem* liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

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

Discussion of Rule

This proposed rule establishes a temporary moving security zone. This moving security zone will encompass all navigable waters of the COTP Portland, Maine zone, extending from the surface to the sea floor, within 500-yards of the President while transiting the zone between September 17, 2004 and September 19, 2004. The temporary security zone is necessary to protect the President, and the surrounding area from potential sabotage or other potentially subversive acts, accidents, or other hazards of a similar nature.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of the DHS is unnecessary. Although this rule will temporarily prevent some traffic from transiting a portion of Kennebunk River during the effective period, the effects of this rule will be minimized based on several factors: the impact on navigation will be for a minimal amount of time, and delays, if any, will be short in length as vessels will have adequate room to navigate around the zone. Moreover, broadcast notifications will be made to the maritime community advising them of the boundaries of the zone and Coast Guard and other law enforcement assets will be on-scene to direct vessels away from the zone. These law enforcement assets will be recognizable by law enforcement insignia, markings, and warning lights.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we 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 transit or anchor in the zone during the specified closure period. However, this rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zone, and the vessels' ability to navigate safely around 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 want to assist small entities in understanding this rule so that

they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Jarrett B. Bleacher at Marine Safety Office Portland, (207) 780-3251.

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 collection of information requirements 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 this rule 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. 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 system practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this 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 since implementation of this action will not result in any:

- (1) Significant cumulative impacts on the human environment;
- (2) Substantial controversy or substantial change to existing environmental conditions;
- (3) Impacts on properties protected under the National Historic Preservation Act or
- (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping Requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-120 to read as follows:

§ 165.T01-120 Security Zone; Portland, ME, Captain of the Port Zone, Presidential Visit.

(a) Location. The following area is a security zone:

All navigable waters of the Captain of the Port, Portland, Maine zone, extending from the surface to the sea floor within 500-yards of the President of the United States.

(b) Effective date. This rule is effective from 8 a.m. EDT on September 17, 2004 until 8 p.m. EDT on September 20, 2004.

(c) Regulations. (1) In accordance with the general regulations contained in §165.33 of this part, entry into or movement within the zone is prohibited unless previously authorized by the Coast Guard Captain of the Port (COTP), Portland, Maine or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP, or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(3) The Captain of the Port, Portland Maine or his designated representative will notify the maritime community of periods during which these zones will be enforced. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(d) Enforcement. The COTP will enforce this zone and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: SEP 13 2004



Gregory D. Case
Lieutenant Commander, U.S. Coast Guard
Acting Captain of the Port
Portland, Maine