

examination date conflicts with a national holiday, religious observance, or other foreseeable event and the agency publishes in the **Federal Register** an appropriate notice of a change in the examination date. \* \* \*

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**Robert C. Bonner,**  
*Commissioner, Customs and Border Protection.*

Approved: April 24, 2003.

**Timothy E. Skud,**  
*Deputy Assistant Secretary of the Treasury.*  
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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD13-02-020]

RIN 1625-AA00 (Formerly RIN 2115-AA97)

#### Security Zone: Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is establishing a security zone surrounding the City of Portland's Waterfront Park to include all waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges during the annual Rose Festival. Terrorist acts against the United States necessitate this action to properly safeguard all vessels participating in the Portland Rose Festival from terrorism, sabotage, or other subversive acts. We anticipate the security zone will have limited effects on commercial traffic and significant effects on recreational boaters; ensuring timely escorts through this security zone is a high priority of the Captain of the Port.

**DATES:** This rule is effective June 4, 2003.

**ADDRESSES:** 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 (CGD13-02-020) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Tad Drozdowski, c/o Captain of the Port, Portland Oregon at (503) 240-2584.

## SUPPLEMENTARY INFORMATION:

### Regulatory Information

On January 22, 2003, a notice of proposed rulemaking (NPRM) was published entitled Security Zone: Portland Rose Festival on Willamette River in the **Federal Register** (68 FR 2946). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

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**. Waiting 30 days for this rule to be effective is contrary to the public interest. The Captain of the Port has an urgent and critical security need to control the movement of vessels in the vicinity of the Rose Festival. This need is based on the continuing and ongoing terrorist threat against the United States.

The Coast Guard believes that this finding is consistent with the principle of fundamental fairness, which require that all affected persons be afforded a reasonable time to prepare for the effective date of the rulemaking. In 2002 the Coast Guard published a temporary final rule for the Rose Festival in 67 FR 34842 that was substantively identical to this rule. Further, the notice of proposed rulemaking for this rule was published four months prior to the 2003 Rose Festival. Lastly, the security zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for the vessels participating in the Rose Festival. For these reasons waiting 30 days for the rule to be enforceable would be impracticable, unnecessary, and contrary to the public interest.

### Background and Purpose

This security zone is necessary to provide for the security of vessels participating in the 2003 Portland Rose Festival in the navigable waters of the United States. This rule will be effective less than 30 days after publication in the **Federal Register**.

### Discussion of Comments and Changes

There was one comment to this rulemaking. The comment focused on the fact that there is no terrorist threat to the Rose Festival and that this rule will affect recreational boaters.

The Coast Guard has considered this comment and determined that the risk of inaction is outweighed by the risk of action. There are continuing and ongoing terrorist threats against the United States. The Rose Festival is a large gathering of the public that often

includes several public vessels from the U.S. Navy and Coast Guard. This rule is designed to minimally impact the public, including recreational boaters, while providing a reasonable level of protection for the public and public vessels. Accordingly, no changes were made to the rule.

### 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary.

This expectation is based on adequate resources allowing vessel approvals from the Captain of the Port or his designated representatives to transit through the regulated area. For the above reasons, the Coast Guard only anticipates minor economic impact.

### 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 proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this portion of the Willamette River. The likely impacts to small entities would include minor time delays, potential inspections, and possibly non-entrance if the Captain of the Port or his designated representatives sense the vessels participating in the Rose Festival are threatened. The security zone will not have a significant economic impact because adequate resources will allow vessels timely approval from the Captain of the Port or his designated

representatives to transit through the regulated area.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. A notice of proposed rulemaking was published in January to accommodate mariners by giving them proper notice and to provide a forum for their comments, questions, and concerns.

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. 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.

#### Environment

We have analyzed this 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 because the temporary security zone would not last longer than

one week in duration. The temporary security zone would be established on Wednesday, June 4 with the arrival of the first vessel to the City of Portland's Waterfront Park and extend until the last vessel departs the Waterfront Park on Monday, June 9. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

#### 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; 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.

■ 2. Add § 165.1312 to read as follows:

#### § 165.1312 Security Zone; Portland Rose Festival on Willamette River.

(a) *Location.* The following area is a security zone: All waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges.

(b) *Regulations.* In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Portland or his designated representatives. Section 165.33 also contains other general requirements.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement period.* This section normally will be enforced from the first Wednesday of June to the next Monday in June. In 2003 this section will be enforced from June 4 to June 9. After 2003, a notice of enforcement normally will be published in the **Federal Register** 30 days prior to the beginning of the event.

Dated: May 13, 2003.

**P.D. Jewell,**

*Captain, U.S. Coast Guard, Captain of the Port, Portland.*

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