



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2018-1082]**

**RIN 1625-AA87**

**Security Zone; Puget Sound, Tacoma, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary security zone for the navigable waters within 500 yards of the M/V CAPE HUDSON, Official Number 901127, during its departure from Terminal 7 in Tacoma, WA. This security zone is necessary to protect the vessel and associated personnel from terrorist acts, accidents, sabotage, or other subversive acts associated with the vessel's movement of military cargo. Entry of vessels or persons into this zone is prohibited while the M/V CAPE HUDSON is in transit unless specifically authorized by the Captain of the Port Puget Sound.

**DATES:** This rule is effective without actual notice from 8:45 am on December 21, 2018, through 9 p.m. on January 2, 2019. For the purposes of enforcement, actual notice will be used from 8:00 a.m. on December 20, 2018, through 8:44 a.m. December 21, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1082 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Branch, U.S. Coast Guard; telephone 206-217-6051, email SectorPugetSoundWWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notification of the movement of military cargo until December 3, 2018, and immediate action is needed to protect the security of M/V CAPE HUDSON and its personnel from terrorist acts, accidents, sabotage, or other subversive acts. It is impracticable to publish a NPRM because we must establish this security zone by December 20, 2018.

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**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the

potential security risks associated with the shipment of military cargo onboard the M/V CAPE HUDSON.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Puget Sound (COTP) has determined that there are potential security concerns associated with the shipment of military cargo aboard the M/V CAPE HUDSON. This rule is needed to protect the M/V CAPE HUDSON and its personnel from terrorist acts, accidents, sabotage, or other subversive acts while underway from Terminal 7 in Tacoma, WA to the Puget Sound Traffic Separation Lane Lighted Buoy SE.

### **IV. Discussion of the Rule**

This rule establishes a security zone from 8 a.m. on December 20, 2018 through 8 p.m. on January 2, 2019. The security zone will cover all navigable waters within 500 yards of the M/V CAPE HUDSON while underway from Terminal 7 in Tacoma, WA until the vessel arrives near the Puget Sound Traffic Separation Lane Lighted Buoy SE. The duration of the zone is intended to protect the M/V CAPE HUDSON and its personnel during its departure transit. Because weather conditions may affect the vessel's loading timeframes, the actual planned departure of the vessel will occur between 8 a.m. on December 20, 2018 and 8 p.m. on January 2, 2019.

Enforcement of the security zone will only occur while the vessel is in transit, and no vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and

Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the security zone. Vessel traffic will be able safely transit around this security zone which would impact a small designated area around the M/V CAPE HUDSON during the vessel’s departure transit through Puget Sound for less than 6 hours.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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. 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 person listed in the FOR FURTHER INFORMATION CONTACT section.

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 rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is

consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone limited in duration to M/V CAPE HUDSON's departure from Terminal 7 in Tacoma, WA until the vessel reaches the Puget

Sound Traffic Separation Lane Lighted Buoy SE that will prohibit entry within 500 yards of the vessel. It is categorically excluded from further review under paragraph L 60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**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 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-1082 to read as follows:

**§ 165.T13-1082 Security Zone; Puget Sound, Tacoma, WA.**

(a) Location. The following area is a security zone: All navigable waters, from surface to bottom, within 500 yards of the M/V CAPE HUDSON while underway from Terminal 7 in

Tacoma, WA until the vessel reaches the Puget Sound Traffic Separation Lane Lighted Buoy SE.

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound (COTP) in the enforcement of the security zone.

(c) Regulations. (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF CH 16 or at 206-217-6051. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This rule is effective without actual notice from 8:45 am on December 21, 2018, through 9 p.m. on January 2, 2019. For the purposes of enforcement, actual notice will be used from 8:00 a.m. on December 20, 2018, through 8:44 a.m. December 21, 2018. This rule will be enforced with actual notice by COTP's designated representatives on scene during M/V CAPE HUDSON departure transit.

Dated: December 17, 2018.

L. A. Sturgis,

Captain, U.S. Coast Guard,

Captain of the Port Puget Sound.

[FR Doc. 2018-27579 Filed: 12/20/2018 8:45 am; Publication Date: 12/21/2018]