

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[CGD01-05-025]

RIN 1625-AA87

**Security Zone; New York Marine Inspection Zone and Captain of the Port Zone, New York Harbor****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary security zones in portions of the waters around Stapleton Homeport Pier in Upper New York Bay, as well as the New York City Passenger Ship Terminal and Intrepid Museum in the Hudson River and around each participating Fleet Week vessel. This action is necessary to safeguard Naval vessels, Coast Guard vessels, and critical port infrastructure from sabotage, subversive act, or other threats. This rule does not apply to any vessel engaged in the enforcement of these security zones, other law enforcement, port security, or search and rescue activity. This rule would prohibit entry into or movement within these security zones without authorization from the Captain of the Port of New York.

**DATES:** Comments and related material must reach the Coast Guard on or before May 16, 2005.

**ADDRESSES:** You may mail comments and related material to Lieutenant Junior Grade Scott White, Coast Guard Activities New York Waterways Management Division, 212 Coast Guard Drive, room 310, Staten Island, NY 10301. Coast Guard Activities New York Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Activities New York Waterways Management Division between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Scott White, Waterways Management Division, Coast Guard Activities New York at (718) 354-4228.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

We encourage you to participate in this rulemaking by submitting

comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD01-05-025], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Activities New York at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

**Background and Purpose**

Following the terrorist attacks in New York on September 11, 2001, the Ports of New York and New Jersey have been in a heightened state of threat awareness and port security readiness. Highly publicized events that occur in concentrated areas within the greater New York Metropolitan region have resulted in the elevation of Maritime Security (MARSEC) conditions and an increase in port security measures to abate credible and potential threats against the maritime community and public at large.

Fleet Week 2005 will bring a large composition of U.S. and foreign military vessels to the Port of New York for the purpose of promoting military and naval heritage. The event allows for public access to these vessels as they are moored at the port facilities of the New York City Passenger Ship Terminal, Intrepid Museum, and Stapleton Homeport Pier. Such a high profile event with large a large number of people could present a potential target for terrorist or subversive actions.

The establishment of these security zones is necessary to protect participating vessels, regional infrastructure, and the public from waterborne attack and subversive activity.

**Discussion of Proposed Rule**

The Coast Guard is proposing the establishment of the following

temporary security zones: all waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier in Staten Island, NY; all waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92 at the New York City Passenger Ship Terminal and Intrepid Museum, in Manhattan, NY; and a moving security zone in all waters of the Port of New York/New Jersey within a 500-yard radius of each participating vessel in the 2005 Fleet Week Parade of Ships between Ambrose Light (LLNR 720) and the George Washington Bridge (river mile 11.0) on the Hudson River. Additionally, these temporary moving security zones would be effective during any time that a participating Fleet Week 2005 vessel is underway, including, but not limited to, outbound transits, shifting of mooring or anchorage locations, and special dignitary voyages.

Hence, with this proposed rule, no vessel or person would be allowed within 500 yards of any Fleet Week 2005 participating vessel unless authorized by the Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

The Captain of the Port would also authorize other Federal, State, or local law enforcement vessels to enter the security zones that would be established by this rule. The Captain of the Port will seek the enforcement assistance of other Federal, State, or local law enforcement vessels to assist in ensuring the enforcement of this rule.

Upon being hailed by the U.S. Coast Guard or other designated on-scene patrol personnel, Federal, State, or local law enforcement vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

The zones described above are necessary to protect the Naval, foreign flagged, and Coast Guard vessels participating in Fleet Week 2005, the Stapleton Homeport Pier, the New York City Passenger Ship Terminal; the Intrepid Museum, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the vessels and piers that could potentially cause serious negative impact to vessels, the port, or the environment and result in numerous casualties.

This proposed rule would not create a security zone around vessels engaged in the enforcement of these security zones, other law enforcement, port security, or search and rescue activity. The Captain of the Port does not expect

this rule to interfere with the transit of any vessels through the waterways adjacent to each facility.

No person or vessel may enter or remain in a prescribed security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a security zone must obey any direction or order of the Captain of the Port. 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.

Any violation of any security zone (established herein) is punishable by, among others, civil penalties where each day of a continuing violation is a separate violation, criminal penalties, 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.

### Regulatory Evaluation

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. 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 the regulatory policies and procedures of DHS is unnecessary. This conclusion is based on the fact that the zones are temporary in nature; the zones implicate relatively small portions of the waterway; and vessels will be able to transit around the security zones at all times or after a limited wait while the parade passes their location.

### 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 rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Upper New York Bay and the Hudson River in which entry will be prohibited by these security zones.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones are temporary in nature; the zones implicate relatively small portions of the waterways; and vessels will be able to transit around the security zones at all times or after waiting for a limited duration while the parade column passes their location.

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 (see **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. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Scott White, Waterways Management Division, Coast Guard Activities New York at (718) 354–4228. 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.

### 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 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 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 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

### 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 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 made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. From 8 a.m., May 25, 2005, to 8 p.m. June 1, 2005, add temporary § 165.T01–053 to read as follows:

#### § 165.T01–053 Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are security zones:

(1) *Stapleton Homeport Pier, Upper New York Bay, Staten Island, NY.* All waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier bound by the following approximate positions: 40°38′00.6″ N, 074°04′22.3″ W, thence to 40°37′51.1″ N, 074°03′46.5″ W, thence to 40°37′27.5″ N, 074°03′54.5″ W, thence to 40°37′33.7″ N, 074°04′20.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

(2) *New York City Passenger Ship Terminal and Intrepid Museum, Hudson River, Manhattan, NY.* All waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92 bound by the following points: from the northeast corner of Pier 81 where it intersects the seawall, thence to approximate position 40°45′51.3″ N, 074°00′30.2″ W, thence to 40°46′27.7″ N, 074°00′04.9″ W, thence to the southeast corner of Pier 97 where it intersects the seawall.

(3) *2005 Fleet Week Parade of Ships and Navigational Periods, Port of New York/New Jersey.* All waters of the Port of New York/New Jersey within a 500-yard radius of each vessel participating in 2005 Fleet Week events while underway between Ambrose Light (LLNR 720) and the George Washington Bridge (river mile 11.0) on the Hudson River.

(b) *Enforcement period.* This section will be enforced from 8 a.m. on Wednesday, May 25, 2005, until 8 p.m. on Wednesday, June 1, 2005.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) No vessel or person is allowed within 500 yards of a vessel protected by the security zone described in Paragraph (a)(3), unless authorized by the Captain of the Port or the designated on-scene-patrol personnel.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard, as well as all uniformed Federal, State, and local law enforcement personnel assisting with event patrol. Upon being hailed by a U.S. Coast Guard or other Federal, State, or local law enforcement vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: April 5, 2005.

**Glenn A. Wiltshire,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[RO4–OAR–2005–GA–0002; RO4–OAR–2005–GA–0003; FRL–7901–4]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Georgia, Redesignation of Atlanta 1-Hour Severe Ozone Nonattainment Area to Attainment for Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On February 1, 2005, the State of Georgia, through the Georgia Environmental Protection Division (EPD), submitted; a request to redesignate the 1-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Atlanta, Georgia, to attainment; and a request for EPA approval of a Georgia State Implementation Plan (SIP) revision containing a 10-year maintenance plan for the 13-county Atlanta area, including new motor vehicle emission budgets (MVEBs) for the year 2015. In addition, Georgia has requested that EPA make a determination that certain Clean Air Act (CAA or Act) SIP submittal requirements related to attainment demonstrations and reasonable further progress are not applicable requirements for the purposes of this redesignation request because the Atlanta area has attained the 1-hour ozone NAAQS based on ambient air monitoring data for the 3-