

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[CGD01-03-020]****RIN 1625-AA00****Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone in the Atlantic Ocean west of the Ambrose to Hudson Canyon Traffic Lane for high interest vessels during emergency situations. This action is necessary to protect the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during emergency situations onboard high interest vessels. This action is intended to restrict vessel traffic in a portion of the Atlantic Ocean.

**DATES:** Comments and related material must reach the Coast Guard on or before January 20, 2004.

**ADDRESSES:** You may mail comments and related material to Waterways Oversight Branch (CGD01-03-020), Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, NY 10305. The Waterways Oversight Branch of Coast Guard Activities New York 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 room 203, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354-4191.

**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 (CGD01-03-020), 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 the Waterways Oversight Branch 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**

The Coast Guard proposes to establish a permanent security zone between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21'29.9" N, 073°44'41.0" W, thence to 40°21'04.5" N, 073°45'31.4" W, thence to 40°15'28.3" N, 073°44'13.8" W, thence to 40°15'35.4" N, 073°43'29.8" W, thence to 40°19'21.2" N, 073°42'53.0" W, thence to the point of origin. The security zone would only be used for high interest vessels due to emergency situations onboard the vessel.

On January 31, 2002, a release of MTBE (methyl tertiary-butyl ether) onboard the M/V LEADER required the closure of Anchorage Grounds No. 23-A, 23-B, and 24 in the Narrows. Additionally, from September 11, to September 13, 2002, a radiological anomaly was discovered onboard the M/V PALERMO SENATOR during a vessel boarding. As a result, the vessel was ordered to depart the Port of New York/New Jersey and remain at anchorage for further investigation. To maximize safety, the Captain of the Port New York established a security zone around the anchored vessel.

While these incidents had uneventful conclusions they each posed a significant threat to port infrastructure and the local population. The Coast Guard intends to minimize risk to the Port of New York/New Jersey and the area population by requiring vessels in similar emergency situations to anchor in the proposed security zone while the vessel is inspected and cleared for a safe transit.

**Discussion of Proposed Rule**

The proposed security zone includes all waters of the Atlantic Ocean between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21'29.9" N, 073°44'41.0" W, thence to 40°21'04.5" N, 073°45'31.4" W, thence to 40°15'28.3" N, 073°44'13.8" W, thence to 40°15'35.4" N, 073°43'29.8" W, thence to 40°19'21.2" N, 073°42'53.0" W, thence to the point of origin. The proposed security zone would prevent vessels from transiting a portion of the Atlantic Ocean and is needed to protect vessel operators from the hazards associated with emergency situations onboard vessels that are not authorized within the Port of New York/New Jersey due to conditions that may be dangerous to the Port and the local population. Marine traffic would still be able to transit around the security zone when it is activated via already established traffic separation schemes. In cases of emergency, vessels transiting in the traffic separation scheme traffic lanes adjacent to the security zone would be authorized to enter the adjacent separation zone between traffic lanes to avoid immediate danger. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed security zone.

The Coast Guard does not know when the security zone would be enforced as the zone would be used only on an as needed basis. Establishing a permanent security zone by notice and comment rulemaking provides the public the opportunity to comment on the proposed zone, location and size. Coast Guard Activities New York would give notice of the enforcement of the security zone by all appropriate means to provide the widest publicity among the affected segments of the public. This proposed rule has been discussed with the Sandy Hook Pilots Association and they do not feel this zone would interfere with the New York Traffic Separation Scheme. Notifications would be made to the local maritime community by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at <http://www.harborops.com>.

**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 finding is based on the minimal time that vessels would be restricted from the zone, and the zone is in an area where the Coast Guard expects insignificant adverse impact on all mariners during periods when the zone is in effect. Vessels may also still transit through all Traffic Lanes to, and from, the Port of New York/New Jersey. As stated above, in cases of emergency, vessels transiting in the adjacent traffic lanes would be authorized to enter the adjacent separation zone to avoid immediate danger. This proposed rule has been discussed with the Sandy Hook Pilots Association. The Pilot's Association does not feel that activation of this proposed zone would interfere with the New York Traffic Separation Scheme. Notifications of when the zone would be in effect would also be made to the local maritime community by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at <http://www.harborops.com>.

#### 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 proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels, including commercial fisherman, intending to transit, engage in fishing, or anchor in a portion of the Atlantic Ocean during the times this proposed zone is activated.

This security zone would not have a significant economic impact on a substantial number of small entities for the following reasons: Commercial Vessel traffic would continue to transit

through the New York Traffic Separation Scheme. Recreational, fishing and small commercial vessels would still be able to transit around the security zone. Additionally, the periods of time when the zone would be effective are expected to be short and nothing more than minimal interference with commercial fishing operations is expected. The Sandy Hook Pilots Association agrees that activating the zone would not interfere with the traffic separation scheme. In the event that the zone is activated, maritime advisories widely available to users of the Port of New York/New Jersey would be issued by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at <http://www.harborops.com>.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed 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 Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

#### 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 proposed 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 proposed 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.

#### Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because it establishes a security zone. A "Categorical Exclusion Determination" is 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 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. In § 165.169, add a new paragraph (a)(7), revise paragraph (b), and add new paragraph (c) to read as follows:

#### § 165.169 Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.

(a) \* \* \*

(7) *Approaches to New York, Atlantic Ocean.* The following area is a security zone: All waters of the Atlantic Ocean between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21'29.9" N, 073°44'41.0" W, thence to 40°21'04.5" N, 073°45'31.4" W, thence to 40°15'28.3" N, 073°44'13.8" W, thence to 40°15'35.4" N, 073°43'29.8" W, thence to 40°19'21.2" N, 073°42'53.0" W, thence to the point of origin.

(b) *Regulations.* (1) Entry into or remaining in a safety or security zone is prohibited unless authorized by the Coast Guard Captain of the Port, New York.

(2) Persons desiring to transit the area of a safety or security zone may contact the Captain of the Port at telephone number 718-354-4088 or on VHF channel 14 (156.7 MHz) or VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) Vessels not actively engaged in authorized vessel to facility transfer operations shall not stop or loiter within that part of a commercial waterfront facility safety and security zone extending into the navigable channel, described in paragraph (a)(3) of this section, without the express permission of the Coast Guard Captain of the Port or his or her designated representative, including on-scene patrol personnel.

(4) The zone described in paragraph (a)(7) of this section is not a Federal Anchorage Ground. Only vessels directed by the Captain of the Port or his or her designated representative to enter this zone are authorized to anchor here.

(5) Vessels do not need permission from the Captain of the Port to transit the area described in paragraph (a)(7) of this section during periods when that security zone is not being enforced.

(c) *Enforcement.* Enforcement periods for the zone in paragraph (a)(7) of this section will be announced through marine information broadcast or other appropriate method of communication. The Coast Guard is enforcing the zone whenever a vessel is anchored in the security zone or a Coast Guard patrol vessel is on-scene.

Dated: November 12, 2003.

**C.E. Bone,**

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

[FR Doc. 03-29026 Filed 11-19-03; 8:45 am]

**BILLING CODE 4910-15-P**

#### POSTAL SERVICE

#### 39 CFR Part 501

#### Authorization To Manufacture and Distribute Postage Meters

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** Only manufacturers and distributors authorized by the Postal Service are allowed to manufacture and/or distribute postage meters. This proposed rule notifies them that the Postal Service may revoke or suspend, wholly or in part, their authorization to distribute postage meters if they make or distribute false and misleading

statements about actions or proposed actions of the Postal Service regarding the postage meter program.

**DATES:** The Postal Service must receive your comments on or before December 22, 2003.

**ADDRESSES:** Mail or deliver written comments to Manager, Postage Technology Management, 1735 N Lynn Street, Room 5011, Arlington, VA 22209-6370. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Wayne Wilkerson, manager of Postage Technology Management, at 703-292-3691 or by fax at 703-292-4073.

**SUPPLEMENTARY INFORMATION:** The intentional dissemination of false and misleading communications, advertising, or promotional materials that misrepresent actions or proposed actions of the Postal Service is misleading and confusing to customers of the Postal Service. These false and misleading statements are often made to encourage customers to change from one postage meter or postage meter supplier to another. If the Postal Service identifies such practices, it will take appropriate action to notify law enforcement agencies concerned with false and misleading advertising practices and will take action to publish the deceptive communications or advertising with appropriate corrective statements. In addition, by the proposed rule, the Postal Service is providing notice to authorized postage meter manufacturers and distributors that their approval to distribute meters throughout the United States or any part thereof may be jeopardized if the Postal Service determines that they or their employees, agents, or dealers have engaged in such false and misleading communication or advertising practices. If an authorized manufacturer or distributor is in doubt as to the accuracy of any proposed representation concerning actions or proposed actions of the Postal Service, they are invited to verify the accuracy of the representation with the office of Postage Technology Management.

We will review any public comments and will issue a final rule amending these sections.

#### Notice and Comment

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments