



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0737]

RIN 1625-AA87

Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary security zones on the waters of the East River and Bronx Kill in the vicinity of Randalls and Wards Island, the Wall Street Heliport, and the United Nations Headquarters. These security zones are necessary to ensure the safety of the President of the United States, members of his official party, and other senior government officials. In addition, this action is necessary to protect visiting dignitaries and the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' visit to New York City. The zones will restrict vessels from a portion of the East River and Bronx Kill when public officials are scheduled to arrive and depart the area. Persons or vessels will not be

allowed to enter these security zones without permission from the Captain of the Port New York (COTP) or the COTP's designated on-scene representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until September 29, 2014 at 8:00 p.m. For the purposes of enforcement, actual notice will be used from the date the rule was signed, September 8, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0737]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Hannah Eko, Waterways Management Division, Coast Guard Sector New York; telephone 718-354-4114, e-mail Hannah.O.Eko@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule
VTSNY	Vessel Traffic Service New York

A. Regulatory History and Information

On four previous occasions, the Coast Guard established similar temporary security zones on the waters of the East River and Bronx Kill in the vicinity of Randalls Island and Wards Island, Wall Street Heliport, and the United Nations Headquarters. Those four security zones were effective on the following dates: March 11, 2014, April 11, 2014, June 17, 2014, and July 17, 2014. In each of those instances, the Coast Guard was unable to publish the temporary security zone in the Federal Register prior to enforcing the zone due to receiving late notifications regarding the arrival dates of the visiting dignitaries.

The Coast Guard is issuing this final 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), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because the specifics associated with the Presidential and dignitary visits were not received in time to publish an NPRM and seek comments before the subject visits. Publishing an NPRM and delaying the effective date of this rule to await public comments would be impracticable and contrary to the public interest since it would inhibit the Coast Guard's ability to fulfill its statutory missions and jeopardize the safety of the President of the United States, members of his official party, other senior government officials, and visiting dignitaries.

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 for the same reasons discussed in the preceding paragraph.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define security zones.

The United States Secret Service has requested that the Coast Guard establish a temporary security zone on the waters of

the East River and Bronx Kill during the arrival and departure of the President of the United States to and from Randalls and Wards Islands or Wall Street Heliport, New York. Additionally, the Coast Guard anticipates that various dignitaries will visit the United Nations Headquarters between September 17, 2014 and September 29, 2014. These visits by the President of the United States, members of his official party, senior government officials, and visiting dignitaries may incite terrorism, sabotage, or other subversive acts. Accordingly, the Captain of the Port, Sector New York, has determined that these security zones are necessary to protect said individuals.

C. Discussion of the Final Rule

For the reasons discussed above, the Captain of the Port, Sector New York, is establishing three temporary security zones. These temporary security zones will be in effect from September 17 to September 29, 2014. The security zones are located on a portion of the East River and Bronx Kill. The East River and Bronx Kill security zones cover waters in the vicinity of Wall Street Heliport, Randalls and Wards Island, and the United Nations Headquarters. Specific geographic locations for each security zone are specified in the regulatory text.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize

our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This determination is based on the limited time that vessels will be restricted from the zones. The temporary security zones will only be enforced for a limited duration from 6:00 a.m. on September 17, 2014 until 8:00 p.m. on September 29, 2014. Thus, the Coast Guard expects minimal adverse impact on mariners from the zones' enforcement based on the limited duration of the enforcement period. Moreover, the Coast Guard also expects minimal adverse impact on mariners in light of the limited geographic area affected and because mariners may request authorization from the COTP or a designated on-scene representative to transit each zone. In addition, before and during the enforcement period, the Coast Guard will issue maritime advisories widely available to users of the waterway, including verbal broadcast notice to mariners and distribute a

written notice to waterway users online at <http://homeport.uscg.mil/newyork>.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the East River and Bronx Kill in the vicinity of Wall Street Heliport, Randalls and Wards Island, and the United Nations Headquarters.

These temporary security zones will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section above.

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.

3. 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. If the rule will 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, above. 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.

4. 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).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. 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.

7. 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. 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.

10. Protection of Children from Environmental Health Risks

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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 establishment of three temporary security zones and thus, is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 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. Add § 165.T01-0737 to read as follows:

§ 165.T01-0737 Security Zone, East River; Wall Street Heliport, Manhattan, NY.

(a) Location. Each of the three following areas is a temporary security zone:

(1) All waters of the East River within the following boundaries; east of a line drawn between approximate position 40°42'01" N, 074°00'39" W (east of The Battery) to 40°41'36" N, 074°00'52" W (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between 40°42'14.8" N, 074°00'20.3" W (Wall Street, Manhattan), and the northwest corner of Pier 2 North, Brooklyn (NAD 1983).

(2) All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position 40° 47' 27.12"N, 073° 54' 35.14"W (Lawrence Point, Queens) to a point at approximate position 40° 47'

52.55"N, 073° 54' 35.25"W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6).

(3) All waters of the East River north of a line drawn from approximate position 40°44'37" N, 073°58'16.5" W (the base of East 35th Street, Manhattan), to approximate position 40°44'23" N, 073°57'44.5" W (Hunters Point, Long Island City), and south of the Queensboro Bridge (NAD 1983).

(b) Definitions. For purposes of this section, "Designated on-scene representative" is any Coast Guard VTSNY (Vessel Traffic Service New York) watchstander or any commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. A designated on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard. "Dignitary" means the President or Vice President of the United States, or visiting heads of foreign states or governments.

(c) Effective and enforcement period. This section is effective and will be subject to enforcement from 6:00 a.m. on September 17, 2014 until 8:00 p.m. on September 29, 2014.

(d) Regulations. In accordance with the general regulations in 33 CFR 165.33, no person or vessel may enter or move within the security zone created by this section unless granted permission to do so by the COTP or a designated on-scene

representative. Entry, transit, or anchoring within the security zone described in paragraph (a) of this section is prohibited unless authorized by the COTP.

(e) Notice. The COTP will provide notice of the establishment and enforcement of these security zones in accordance with 33 CFR 165.7.

(f) Vessel operators given permission to enter or operate in a security zone must comply with all directions given to them by the COTP or a designated on-scene representative. Those vessels may be required to anchor or moor up to a waterfront facility.

(g) Vessel operators desiring to enter or operate within a security zone shall telephone the COTP at 718-354-4356 or a designated on-scene representative via VHF channel 16 to obtain permission to do so.

(h) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: September 8, 2014

G. Loeb1
Captain, U.S. Coast Guard
Captain of the Port New York

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