



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-1009]

RIN 1625-AA87

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

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SUMMARY: The Coast Guard proposes to amend 33 CFR 165.164 by establishing three security zones to replace the three regulated navigation areas (RNAs) currently contained within this section. The Coast Guard also proposes to disestablish these three RNAs. The three proposed security zones, just like the RNAs they replace, are meant to promote public safety and to protect dignitaries who visit the United Nations in New York, NY.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division; telephone (718) 354-4195, email [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil) or Lieutenant Myles Greenway, Coast Guard First District Waterways Management Branch, telephone (617) 223-8385, email [Myles.J.Greenway@uscg.mil](mailto:Myles.J.Greenway@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

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
MOA	Memorandum of Agreement
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area
SNPRM	Supplemental Notice of Proposed Rulemaking
UN	United Nations
UNGA	United Nations General Assembly
USSS	United States Secret Service

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be

considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-1009] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-1009) 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.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## B. Regulatory History and Information

On August 30, 2013, we published a final rule entitled "Regulated Navigation Areas, Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY in the Federal Register (78 FR 53671). In so doing, the Coast

Guard, among other things, established within 33 CFR 165.164 three RNAs on the waters of the East River and Bronx Kill, in the vicinity of Wall Street Heliport, Randalls and Wards Islands, and the United Nations Building, New York.

#### C. 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; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define security zones.

As mentioned above, the Coast Guard previously established three RNAs on the waters of the East River and Bronx Kill, near Wall Street Heliport, Randalls and Wards Islands, and the United Nations Building. The primary purpose of these three RNAs is to protect dignitaries, such as the President of the United States, who visit the United Nations. Although these RNAs serve their intended purpose, the Coast Guard proposes to replace them with security zones to best communicate the federal government's security posture in these particular water areas.

#### D. Discussion of Proposed Rule

For the reasons discussed in the previous paragraph, the Coast Guard proposes to amend 33 CFR 165.164 by establishing three security zones to replace the three RNAs that currently exist in that section. Specifically, the Coast Guard proposes

to establish a security zone at 33 CFR 165.164 (a) (1), (a) (2), and (a) (6) in place of the RNAs currently described in those same three subparagraphs. Because these proposed security zones will replace the three RNAs, the Coast Guard also proposes to disestablish the three RNAs. The size, location, boundaries, and enforcement periods for these three proposed security zones will be identical to the size, location, boundaries, and enforcement periods for the existing RNAs.

This proposed rule would make no substantive changes to the security zones described at 33 CFR 165.164 (a) (3), (a) (4), and (a) (5) (respectively, the "Marine Air Terminal, La Guardia Airport Security Zone," "United Nations Security Zone," and "United Nations West Channel Closure Security Zone"). As a purely administrative matter, this proposed rule would re-title the security zones located at 33 CFR 165.164 (a) (4) and (a) (5) to "United Nations Manhattan Shoreline" and "United Nations West Channel Closure," respectively.

This proposed rule would revise 33 CFR 165.164 to contain six security zones, each with the intended purpose of protecting dignitaries visiting the United Nations. One of these security zones, that located at 33 CFR 165.164 (a) (4), would be subject to enforcement at all times. All others would be subject to enforcement only periodically, and the public would be notified of their enforcement in accordance with 33 CFR 165.7.

## E. Regulatory Analyses

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

### 1. Regulatory Planning and Review

This proposed 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 fact that the RNAs would simply be designated as security zones as the more appropriate means to regulate the movement of vessels or individuals in the areas. We are not proposing to make any changes to the size, boundaries, or enforcement duration of these proposed security zones.

### 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 proposed rule will not have a significant economic impact on a substantial number of small entities.

This determination is based on the fact that the RNAs would simply be designated as security zones as the more appropriate means to regulate the movement of vessels or individuals in the areas. We are not proposing to make any changes to the size, boundaries, or enforcement duration of the proposed security zones.

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 proposed 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, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This proposed 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This proposed rule would 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 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.

## 10. Protection of Children from Environmental Health Risks

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.

#### 11. 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.

#### 12. Energy Effects

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

#### 14. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves designating three RNAs as security zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.164 to read as follows:

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

(a) Location. The following areas are security zones:

(1) Wall Street Heliport. 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) Randalls and Wards Islands Security Zone: 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) (NAD 1983).

(3) Marine Air Terminal, La Guardia Airport Security Zone: All waters of Bowery Bay, Queens, New York, south of a line drawn from the western end of La Guardia Airport at approximate position 40°46'47" N, 073°53'05" W to the Rikers Island Bridge at approximate position 40°46'51" N, 073°53'21" W and east of a

line drawn between the point at the Rikers Island Bridge to a point on the shore in Queens, New York, at approximate position 40°46'36" N, 073°53'31" W (NAD 1983).

(4) United Nations Manhattan Shoreline. All waters of the East River bound by the following points: 40°44'37"N, 073°58'16.5"W (the base of East 35th Street, Manhattan), then east to 40°44'34.5"N, 073°58'10.5"W (about 180 yards offshore of Manhattan), then northeasterly to 40°45'29"N, 073°57'26.5"W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45'31"N, 073°57'30.5"W (Manhattan shoreline at the Queensboro Bridge), then southerly along the shoreline to the starting point at 40°44'37"N, 073°58'16.5"W (NAD 1983).

(5) United Nations West Channel Closure. 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°44'31.04"N, 073°58'03.10"W (approximately 400 yards east of the Manhattan shoreline), all waters west of a line drawn from approximate position 40°44'31.04"N, 073°58'03.10"W (approximately 400 yards east of the Manhattan shoreline), to the southern tip of Roosevelt Island at approximate position 40°44'57.96"N, 073°57'41.57"W, then along the western shoreline of Roosevelt

Island to the Queensboro Bridge, and all waters south of the Queensboro Bridge (NAD 1983).

(6) United Nations Full River Closure. 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. As used in this section--

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated 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) Regulations. In accordance with the general regulations in 33 CFR 165.33, no person or vessel may enter or move within a security zone created by this section while that security zone is being enforced unless granted permission to do so by the Coast Guard's First District Commander, the COTP New York, or the designated representative. Vessel operators and

persons given permission to enter or operate in a security zone must comply with all directions given to them by the First District Commander, the COTP, or the designated representative. Upon being hailed by a U.S. Coast Guard or other duly authorized law enforcement vessel (e.g. New York City police) by siren, radio, flashing lights, or other means, the operator of a vessel must proceed as directed and follow any instructions to anchor or moor up to a waterfront facility.

(d) Enforcement Periods. The security zone described in paragraph (a)(4) of this section is subject to enforcement at all times. All other security zones established by this section will only be enforced when necessary to protect dignitaries, as determined by the COTP New York.

(e) Notification. Because the security zone described in paragraph (a)(4) of this section is subject to enforcement at all times, the Coast Guard will not necessarily take any action to further notify the public about the enforcement of that zone. As for the enforcement periods for the other security zones contained herein, the Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any enforcement period. The COTP New York may also notify the public about enforcement of these security zones via <http://homeport.uscg.mil/newyorkinformation>.

(f) Contact Information. Vessel operators desiring to

enter or operate within a security zone established by this section shall telephone the COTP New York at 718-354-4356 or the designated representative via VHF channel 16 to obtain permission to do so.

Dated: September 16, 2014

V.B. Gifford,  
Captain, U.S. Coast Guard,  
Acting Commander, First Coast Guard District.

[FR Doc. 2014-23171 Filed 09/26/2014 at 8:45 am; Publication Date: 09/29/2014]