



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1081]

RIN 1625-AA87

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the Marine Air Terminal, LaGuardia Airport Security Zone. The modification of the security zone would expand the existing security zone boundary north along the Rikers Island Bridge to the intersecting point on the southern tip of Rikers Island then east to the western end of LaGuardia Airport. This expanded security zone is necessary to protect the port, waterfront facilities, and waters of the United States from terrorism, sabotage, or other subversive acts and incidents of a similar nature during visits to New York City by various dignitaries. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-1081 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST1 Kristina Pundt, Sector New York Waterways Division, U.S. Coast Guard; telephone 718-354-4352, email Kristina.H.Pundt@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, Purpose, and Legal Basis**

On September 29, 2014, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) with a request for comments entitled, “Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY” in the Federal Register (79 FR 58298). This NPRM proposed to disestablish three regulated navigation areas (RNAs) and replace each with a security zone. No comments nor requests for a public meeting were received. On December 30, 2014 the Coast Guard published a Final Rule titled, “Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY” in the Federal Register (79 FR 78308). This final rule disestablished the RNAs and replaced each with a security zone. One of the security zones established was the Marine Air Terminal, LaGuardia Airport security zone.

The purpose of this rulemaking is to modify the existing Marine Air Terminal, LaGuardia Airport security zone. Due to location adjustments of security staging areas, the Coast Guard has determined that modification of the existing security zone is necessary to safeguard the port, waterfront facilities, and waters of the United States from terrorism, sabotage, or other subversive acts and incidents of a similar nature during visits by various dignitaries to New York City.

The Coast Guard proposes this rulemaking under the authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; and Department of Homeland Security Delegation No. 0170.1.

### **III. Discussion of Proposed Rule**

The Coast Guard proposes to amend 33 CFR 165.164 by modifying the existing Marine Air Terminal, LaGuardia Airport security zone. The modification of the security zone would expand the existing security zone boundary north along the Rikers Island Bridge to the intersecting point on the southern tip of Rikers Island then east to the western end of LaGuardia Airport. Due to location adjustments of security staging areas, the Coast Guard has determined that the existing security zone does not provide an adequate level of security. The proposed modification will allow enforcement of a security zone that will minimize threat exposure. The regulatory text we are proposing appears at the end of this document.

### **IV. 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 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 limited size and enforcement of the proposed security zone. Although expanding upon the current security zone, the proposed modification only encompasses a small designated area of Bowery Bay. Additionally, the proposed security zone will only be enforced during the infrequent visits of domestic and foreign dignitaries for as limited duration as necessary to safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 prior to periods of enforcement. Lastly, the rule would continue to allow vessels to seek permission to transit the zone.

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

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

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.

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 section. 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.

#### C. Collection of Information

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

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

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 the modification of a security zone that would prohibit entry into Bowery Bay for a limited duration and for a limited number of instances each year. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A draft Record of Environmental Consideration supporting this determination is 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.

#### 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.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION

CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**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. 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. In § 165.164, revise paragraph (a)(3) to read as follows:

(a) \* \* \*

(3) Marine Air Terminal, LaGuardia Airport Security Zone: All waters of Bowery Bay, Queens, New York, inside of a line drawn from the start of the Rikers Island Bridge

in Queens at approximate position 40°46'37"N, 073°53'30"W to the intersecting point on the southern side of Rikers Island at approximate position 40°47'12"N, 073°53'06"W, then a line drawn east to the western end of LaGuardia Airport at approximate position 40°47'00"N, 073°52'44"W, then a line drawn south following the shoreline back to the point of origin at 40°46'37"N, 073°53'30"W (NAD 1983).

Dated: May 7, 2018

M. H. Day,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port New York.  
[FR Doc. 2018-10899 Filed: 5/21/2018 8:45 am; Publication Date: 5/22/2018]