



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1081]

RIN 1625-AA67

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

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the Marine Air Terminal, LaGuardia Airport Security Zone to 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.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-1081 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, 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	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
RNA	Regulated Navigation Area

II. Background Information and Regulatory History

On September 29, 2014, the Coast Guard published an 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 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 them with three security zones. One of the security zones established was the Marine Air Terminal, LaGuardia Airport security zone.

On May 22, 2018, the Coast Guard published an NPRM titled, “Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY” in the Federal Register (83 FR 23619). This NPRM proposed to modify the existing Marine

Air Terminal, LaGuardia Airport security zone due to location adjustments of security staging areas, and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended July 23, 2018, the Coast Guard received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 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; Public Law 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. Due to location adjustments of the security staging areas, the Coast Guard has determined that the existing security zone does not provide an adequate level of security. The modification will allow enforcement of a security zone that will minimize threat exposure. The purpose of this rule is 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.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 22, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule modifies an existing security zone. The modification expands 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.

V. Regulatory Analyses

We developed this 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 rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule 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 security zone. Although expanding upon the current security zone, the modification only encompasses a small designated area of Bowery Bay. Additionally, the 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 about the zone and the rule would 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 received no comments from the Small Business Administration on this rulemaking. 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.

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

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 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). 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.

C. 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).

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 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 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. If you believe this 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 rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 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. It is 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 Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.

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; 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:

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

(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).

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Dated: December, 4, 2018.

J. P. Tama,
Captain, U.S. Coast Guard,
Captain of the Port New York.
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