



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0225]

RIN 1625-AA00

Safety Zones; Aerial Drone Displays, Hudson and East Rivers, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish specific areas of the Hudson and East Rivers where safety zones will be enforced on the navigable waters beneath aerial drone shows. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by aerial drone displays. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector New York or a designated representative. 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 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2024-0225 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST1 Melanie Hughes, Sector New York Waterways Management Division, U.S. Coast Guard; 718-354-4352, melanie.a.hughes1@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

II. Background, Purpose, and Legal Basis

Since November of 2022, U.S. Coast Guard Sector New York has received 11 requests for drone shows within the Captain of The Port's (COTP) area of responsibility. Of those 11 requests, eight have either taken place or were planned to take place in areas above the Hudson and East Rivers. In all cases, the sponsors of the drone shows have requested safety zones beneath the drones' flight path. The request for safety zones is driven by Federal Aviation Administration (FAA) regulation that drones cannot safely fly over human beings. It is becoming increasingly more common to hold drone shows over the water to reduce the number of occupants immediately below a drone show.

Typically, drone shows are comprised of approximately 500 to 1,000 lighted drones, weighing approximately four pounds each, moving throughout a predetermined airspace creating images in the night sky. On average, these drones fly between 100 feet and 400 feet above the waterline but can fly as low as 75 feet and reach heights of up to 600 feet. Risks associated with drone shows include, but are not limited to, the overhead hazard created by drones potentially falling from the sky and vessel clearance reduction. Some commercial vessel pilothouses and sailboat masts can reach upwards of 200 feet above the waterline thus creating a potential for colliding with drones mid-flight. The

COTP has determined that the potential hazards associated with drone shows are a safety risk for any human or vessel directly underneath.

Additionally, some drone shows in the past have conducted practice shows in the same location as the actual drone show, typically a day or two before the actual event. These practice flights pose the same hazards as the actual shows. For this reason, the Coast Guard proposes to establish safety zones for practice flights as well.

Accordingly, the purpose of this rulemaking is to ensure the safety of human life and vessels on the navigable waters of the Hudson and East Rivers underneath drone shows due to the posed hazards. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

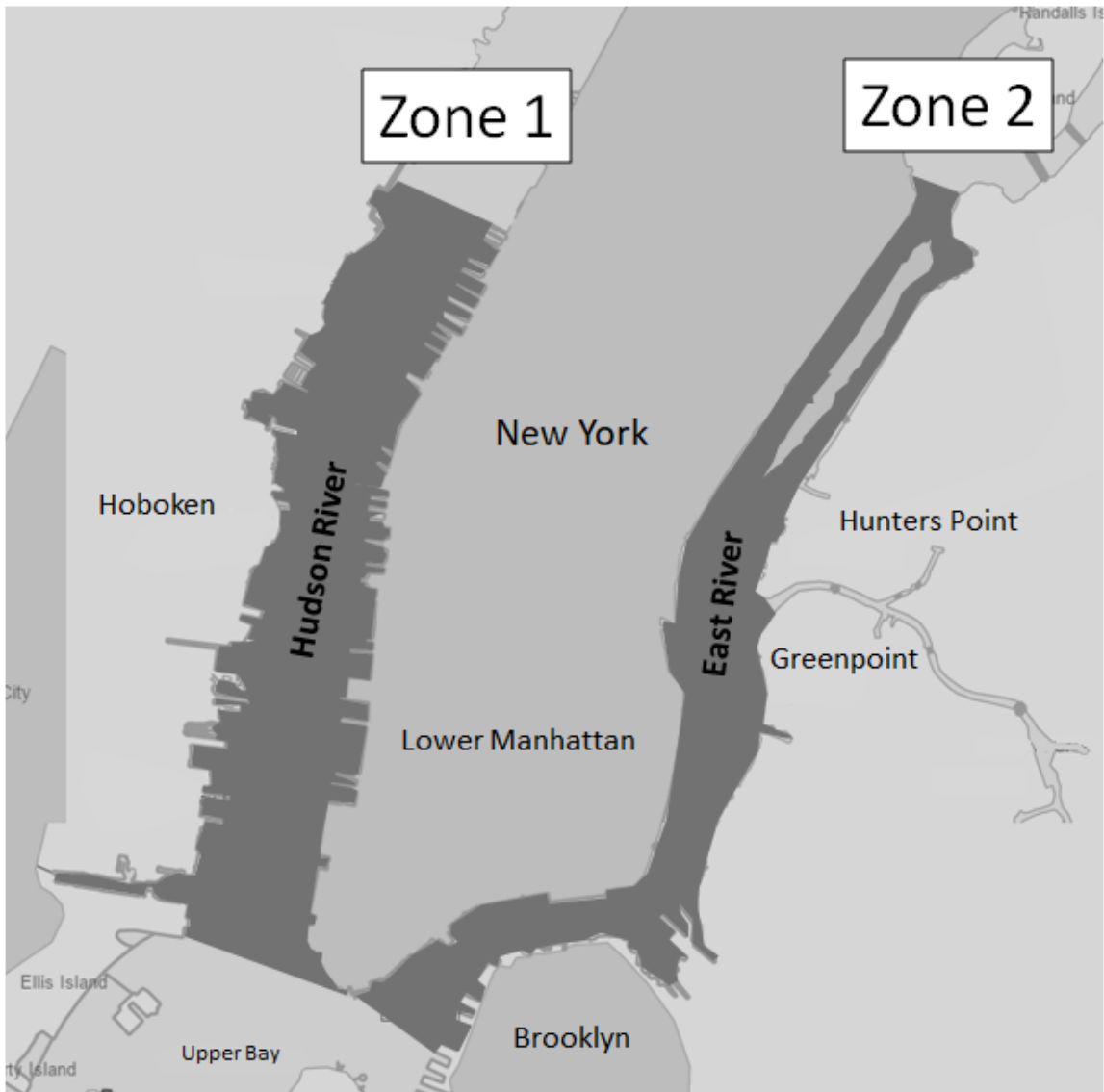
III. Discussion of Proposed Rule

The COTP is proposing to establish specific areas on the Hudson and East Rivers in which safety zones of limited duration can be enforced underneath aerial drone shows. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by aerial drone displays. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the COTP Sector New York or a designated representative. The safety zone for a drone show will last for a limited duration of approximately 10 to 30 minutes while the drones are in the air. The areas permissible for safety zones for drone shows may be anywhere within the two zones described below.

Zone 1 will consist of all navigable waters of the Hudson River beginning at a point near Liberty State Park at approximate location 40°42'20.9"N 74°02'05.7"W traveling north along the shoreline including Morris Canal Basin to a point approximately 300 yards north of Port Imperial Ferry terminal at approximate position 40°46'41.1"N, 74°00'30.4"W thence to Pier 99 Manhattan then traveling south along the shoreline to a point near Whitehall South Ferry terminal and back to the point of origin.

Zone 2 will consist of all navigable waters of the East River beginning at a point near Whitehall South Ferry terminal, approximate position 40°42'01.6"N, 74°00'48.7"W then travel north along the shoreline to East 90th Street Ferry terminal thence to a point near 27th Ave Hallets Point, Astoria at approximate position 40°46'33.2"N, 73°56'13.4"W and then traveling south along the shoreline, excluding Newtown Creek, to a point near Pier 6 Brooklyn and back to the point of origin.

The rule would allow the COTP to establish safety zones for drone shows on all navigable waters of the Hudson and East Rivers up to a 500-yard radius within the boundaries identified as Zone 1 and Zone 2. Entry into the safety zone will be prohibited unless authorized by the COTP or designated representative. The COTP will make notification of the exact dates and times in advance of each enforcement period to the local maritime community through marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, or by an on-scene oral notice and signage. The areas permissible to establish safety zones for drone shows are depicted in dark gray in the chart below.



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. This NPRM has not been designated a

“significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability of other waterway users to safely transit around the safety zone in many cases, and the size and duration of the safety zones will impact a small, designated area of the waterway for a relatively short period of time. Moreover, the Coast Guard will notify mariners of the enforcement via marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, or by an on-scene oral notice. The rule will also allow vessels to seek permission to enter the zone if necessary.

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 safety 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 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 rulemaking would economically affect it.

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. 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 call or email 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 call or email 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 potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide 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 designating specific areas of the Hudson and East Rivers in which to establish up to a 500-yard radius safety zone for drone shows lasting a limited duration of approximately 10 to 30 minutes.

Normally such actions are categorically excluded from further review under paragraph L60a of appendix A, table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. 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 call or email 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.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2024-0225 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the proposed rule, you should see a "Subscribe" option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or

duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 is proposing 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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.0225 to read as follows:

§ 165.0225 Safety Zones; Coast Guard Captain of the Port New York Zone Drone Displays.

(a) *Locations.* The following areas are designated zones in which a safety zone radius up to 500-yards will be established for drone shows. The establishment of a safety zone within a designated zone requires the coordinates defining the center of the safety zone to be within the boundaries of one of the zones described as follows:

(1) *Hudson River Zone 1.* All waters of the Hudson River to include Morris Canal Basin in the vicinity of lower Manhattan, from surface to bottom, encompassed by a line connecting the following points beginning at 40°42'20.9"N, 74°02'05.7"W; traveling north along the shoreline thence to 40°46'41.1"N, 74°00'30.4"W; thence to 40°46'22.2"N,

73°59'38.3"W; traveling south along the shoreline thence to 40°42'02.0"N, 74°00'51.1"W; and back to the point of origin.

(2) *East River Zone 2*. All waters of the East River in the vicinity of lower Manhattan, from surface to bottom, encompassed by a line connecting the following points beginning at 40°42'01.6"N, 74°00'48.7"W; traveling north along the shoreline thence to 40°46'38.0"N, 73°56'31.6"W; thence to 40°46'33.2"N, 73°56'13.4"W; traveling south along the shoreline thence to 40°44'17.2"N, 73°57'38.7"W; thence to 40°44'11.6"N, 73°57'37.0"W; continuing south along the shoreline thence to 40°41'35.7"N, 74°00'14.3"W; and back to the point of origin. These coordinates are based on Datum WGS 84.

(b) *Definitions*. As used in this section:

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York Zone in the enforcement of the safety zone.

Official Patrol Vessels means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessels assigned as an on-scene representative approved by the COTP.

Spectators means all persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations*. (1) When enforced, under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter the designated safety zone, contact the COTP or the COTP's Designated Representative via VHF–FM Marine Channel 16, or by contacting the Coast Guard Sector New York command center at 718–354–4356. Those

in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* The COTP will make notification of the exact dates and times in advance of each enforcement period for the locations above in paragraph (a) of this section to the local maritime community through marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, or by an on-scene oral notice and signage.

Jonathan A. Andrechik,

Captain, U.S. Coast Guard,

Captain of the Port Sector New York.

[FR Doc. 2024-11446 Filed: 5/23/2024 8:45 am; Publication Date: 5/24/2024]