

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## 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 State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 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.

## Taking of Private Property

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

## 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.

## Protection of Children

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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

## Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment. Under figure 2–1, paragraph (34)(e) of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

## List of Subjects in 33 CFR Part 117

Bridges.

## Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.789, from June 1, 2004 through January 31, 2005, paragraph (d) is temporarily suspended and a new temporary paragraph (h) is added to read as follows:

### § 117.789 Harlem River.

\* \* \* \* \*

(h) The draw of the Triborough (125th Street) Bridge, mile 1.3, shall open on signal from 10 a.m. to 5 p.m. if at least a forty-eight hour notice is given.

Dated: May 20, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 04–12358 Filed 5–28–04; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD01–04–053]

RIN 1625–AA00

### Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary security zones in portions of the waters around Stapleton Homeport Pier in Upper New York Bay, and the New York City Passenger Ship Terminal and Intrepid Museum in the Hudson River and a moving security zone around each participating vessel in the 2004 Fleet Week parade. This action is necessary to safeguard Naval and Coast Guard vessels, critical port infrastructure and coastal facilities from sabotage, subversive acts, or other threats. This rule prohibits entry into or movement within these security zones without authorization from the Captain of the Port New York.

**DATES:** This rule is effective from 8 a.m., May 24, 2004, until 8 p.m., June 2, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–

053) and are available for inspection or copying at room 203, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354-4191.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The Captain of the Port conducts an ongoing assessment of the maritime domain security needs within the port and has determined that the temporary security zones established by this rule are necessary to provide for the protection of Naval and Coast Guard vessels, critical port infrastructure and coastal facilities. This determination was reached after due consideration of various warnings publicly disseminated by the Federal Bureau of Investigation and other law enforcement agencies, and threatening statements attributed to the al Qaeda organization. In view of the urgent need to adequately safeguard Naval and Coast Guard vessels, critical coastal facilities and infrastructure from potential terrorist attack, any delay in making these security zones effective would be contrary to the public interest.

For the same reasons, the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

**Background and Purpose**

On September 11, 2001 three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. See, *Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of

the United States is endangered by disturbances in international relations of the United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States*, 67 FR 56215 (September 3, 2002).

Since the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions within Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The Coast Guard is establishing temporary security zones around the Stapleton Homeport Pier in Upper New York Bay, the New York City Passenger Ship Terminal and Intrepid Museum in the Hudson River, and around all participating vessels in the 2004 Fleet Week. These security zones are necessary to provide for the security of the port and to ensure that vessels and facilities, are not used as targets of, or platforms for, terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones.

**Discussion of Rule**

This rule establishes the following temporary security zones:

*Stapleton Homeport Pier, Upper New York Bay, Staten Island, NY*

The Coast Guard is establishing a temporary security zone in all waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier, encompassed by a line connecting the following points: 40°38'00.6" N, 074°04'22.3" W, thence to 40°37'51.1" N, 074°03'46.5" W, thence to 40°37'27.5" N, 074°03'54.5" W, thence to 40°37'33.7" N, 074°04'20.8" W, (NAD 1983) thence along the shoreline to the point of origin.

*New York City Passenger Ship Terminal and Intrepid Museum, Hudson River, Manhattan, NY*

The Coast Guard is establishing a temporary security zone in all waters of

the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92, encompassed by a line connecting the following points: from the northeast corner of Pier 81 where it intersects the seawall, thence to approximate position 40°45'51.3" N, 074°00'30.2" W, thence to 40°46'27.7" N, 074°00'04.9" W, thence to the southeast corner of Pier 97 where it intersects the seawall.

*2004 Fleet Week, Port of New York/New Jersey*

The Coast Guard is establishing a temporary moving security zone in all waters of the Port of New York/New Jersey within a 500-yard radius of each participating vessel in the 2004 Fleet Week between Ambrose Light (LLNR 720) and the George Washington Bridge (river mile 11.0) on the Hudson River.

The zones described above are necessary to protect the Naval and Coast Guard vessels participating in Fleet Week 2004, the Stapleton Homeport Pier, the New York City Passenger Ship Terminal; the Intrepid Museum, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the vessels and piers that could potentially cause serious negative impact to vessels, the port, or the environment and result in numerous casualties. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Vessels will still be able to transit around the security zones at all times or after a limited wait while the parade column passes their location. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones unless they are required to wait for a limited duration while the parade column is transiting by their location.

Any violation of any security zone herein is punishable by, among others, civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$100,000), in rem liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1226.

No person or vessel may enter or remain in a prescribed security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of

any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the fact that: the zones are temporary in nature; the zones implicate relatively small portions of the waterway; and vessels will be able to transit around the security zones at all times or after a limited wait while the parade passes their location.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Upper New York Bay and the Hudson River in which entry will be prohibited by these security zones.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the zones are temporary in nature; the zones implicate relatively small portions of the waterways; and vessels will be able to transit around the security zones at all times or after waiting for a limited duration while the parade column passes their location.

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.

### Assistance for Small Entities

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 temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. 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 Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### 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 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.

### Taking of Private Property

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

### 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.

### Protection of Children

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 might disproportionately affect children.

### 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, 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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

### 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. From 8 a.m., May 24, 2004, to 8 p.m., June 2, 2004, add temporary § 165.T01–053 to read as follows:

**§ 165.T01–053 Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.**

(a) *Security zones.* The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are security zones:

(1) *Stapleton Homeport Pier, Upper New York Bay, Staten Island, NY.* (i) *Location:* All waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier, encompassed by a line connecting the following points: 40°38'00.6" N, 074°04'22.3" W, thence to 40°37'51.1" N, 074°03'46.5" W, thence to 40°37'27.5" N, 074°03'54.5" W, thence to 40°37'33.7" N, 074°04'20.8" W, (NAD 1983) thence along the shoreline to the point of origin.

(ii) *Enforcement period.* Paragraph (a)(1)(i) will be enforced from 8 a.m. on Monday, May 24, 2004 to 8 p.m. on Wednesday, June 2, 2004.

(2) *New York City Passenger Ship Terminal and Intrepid Museum, Hudson River, Manhattan, NY.* (i) *Location:* All waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92, encompassed by a line connecting the following points: from the northeast corner of Pier 81 where it intersects the seawall, thence to approximate position 40°45'51.3" N, 074°00'30.2" W, thence to 40°46'27.7" N, 074°00'04.9" W, thence to the southeast corner of Pier 97 where it intersects the seawall.

(ii) *Enforcement period.* Paragraph (a)(2)(i) will be enforced from 9 a.m. on Tuesday, May 25, 2004 to 8 p.m. on Wednesday, June 2, 2004.

(3) *2004 Fleet Week, Port of NY/NJ.* (i) *Location:* All waters of the Port of New York/New Jersey within a 500-yard radius of each participating vessel in the 2004 Fleet Week between Ambrose Light (LLNR 720) and the George Washington Bridge (river mile 11.0) on the Hudson River.

(ii) *Enforcement period.* Paragraph (a)(3)(i) will be enforced from 8 a.m. on Wednesday, May 26, 2004, until 8 p.m. on Wednesday, June 2, 2004.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

(3) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 24, 2004.

**C.E. Bone,**

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

[FR Doc. 04–12319 Filed 5–28–04; 8:45 am]

**BILLING CODE 4910–15–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

**[COTP Huntington–04–001]**

**RIN 1625–AA00**

**Safety Zone; Ohio River, Marietta, OH**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 171.5 and ending at mile 172.5, extending the entire width of the river. This safety zone is needed to protect participating vessels and mariners during the Marietta Roar Tunnel Boat Race. With the exception of participating vessels and mariners, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Huntington or a designated representative.

**DATES:** This rule is effective from 9:30 a.m. on July 3, 2004 until 7 p.m. on July 4, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Huntington–04–001] and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Ave., Huntington, WV between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer (PO) John Bialasik, Marine Safety Office Huntington, WV, at (304) 529–5524.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners participating in a high-speed boat race.

**Background and Purpose**

The APR Powerboat Superleague will be conducting the Marietta Roar Tunnel Boat Race on July 3 and July 4, 2004. Race boats will be traveling at a very high rate of speed and at times may not be able to stop to avoid a collision if spectator or other vessels are operating in close proximity of the racecourse. A safety zone is needed to protect the race boats, persons and spectators from the potential safety hazards associated with this boat race.

**Discussion of Rule**

The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 171.5 and ending at mile 172.5, extending the entire width of the river. The term “participating vessel” includes all vessels registered with race officials to race or work in the event. They include race boats, rescue boats, towboats and picket boats associated with the race. With the exception of participating vessels and those mariners operating participating vessels, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Huntington or a designated representative. This rule is effective from 9:30 a.m. on July 3, 2004 until 7 p.m. on July 4, 2004. This rule will only be enforced from 9:30 a.m. until 7 p.m. on each day that it is effective. During non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port Huntington or a designated representative. The Captain of the Port Huntington will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

**Regulatory Evaluation**

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs