

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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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 rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction 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 (34)(g), of the Instruction, from further environmental documentation since implementation of this action will not result in any significant cumulative impacts on the human environment; does not involve a

substantial change to existing environmental conditions; and is consistent with Federal, State and/or local laws or administrative determinations relating to the environment.

An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under

#### ADDRESSES.

#### List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

#### PART 147—[SAFETY ZONES]

■ 1. The authority citation for Part 147 continues to read as follows:

**Authority:** 14 U.S.C. 85; 43 U.S.C. 1333; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.845 to read as follows:

#### § 147.845 Perdido Regional Host safety zone.

(a) *Description.* The Perdido Regional Host is located at position 26°07'44" N, 094°53'53" W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except:

- (1) An attending vessel;
- (2) A vessel under 100 feet in length overall not engaged in towing; or
- (3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: October 31, 2008.

**J.H. Korn,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard District.*

**Editorial Note:** This document was received in the Office of the Federal Register on Tuesday, February 10, 2009.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2007–0074]

RIN 1625–AA87

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule modifies several aspects of the permanent safety and security zones within the New York Captain of the Port Zone. This action modifies existing safety and security zones, consolidates and modifies safety and security zones currently found in separate regulations, and removes certain safety and security zones so as to better meet the safety and security needs of the New York and New Jersey port community.

**DATES:** This rule is effective March 16, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–0074 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2007–0074 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Waterways Management Division, Coast Guard Sector New York, 212 Coast Guard Drive, Staten Island, NY 10305 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call LT Edward Munoz, Waterways Management Division, Coast Guard Sector New York, 718–354–2353. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

On May 6, 2008, we published a notice of proposed rulemaking (NPRM) entitled Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone in the **Federal Register** (73 FR 24889). We received 15 letters commenting on the proposed rule. A public meeting was requested to discuss the proposed changes to the security zones around Liberty and Ellis Island. As discussed below, the proposed changes to the Liberty and Ellis Island security zones have been removed from this rulemaking therefore there was no longer a need to hold a public meeting.

## 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. President Bush 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 (73 FR 51211, August 28, 2008); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism (73 FR 54489, September 18, 2008). 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 that have existed since the 2001 terrorist attacks 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).

Following the September 11, 2001 attacks, we published a temporary final rule (66 FR 51558, October 10, 2001) that established a temporary regulated navigation area, and safety and security zones in the New York Marine Inspection and Captain of the Port New York Zones. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. That temporary final rule was subsequently revised (67 FR 16016, April 4, 2002; 67 FR 53310, August 15, 2002) to extend its effective period through December 31, 2002.

On November 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone" in the **Federal Register** (67 FR 70892). The NPRM proposed to revise safety and security zones around designated vessels to include specific regulations for Liquefied Hazardous Gas (LHG) vessels and Designated Vessels and to establish Safety and Security Zones at Indian Point Nuclear Power Station, U.S. Coast Guard Cutters and Shore Facilities, commercial waterfront facilities, Liberty and Ellis Islands, bridge piers and abutments, overhead power cable towers, tunnel ventilator and the New York City Passenger Ship Terminal, Hudson River, NY. We received no letters commenting on the proposed rule. No public hearing was requested and none was held. On January 22, 2003, we published a final rule entitled "Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone" in the **Federal Register** (68 FR 2886). That rule established permanent safety and security zones at the locations above.

In the NPRM associated with this final rule, the Coast Guard (USCG) proposed 11 distinct changes to the current safety and security zone regulations in 33 CFR part 165 to improve maritime security and reduce unnecessary burdens imposed by current security zones. The proposals are as follows:

*Disestablishment of 33 CFR 165.160:* Safety and security zones around LHG Vessels, LHG Facilities, and Designated Vessels are currently codified in 33 CFR 165.160. The NPRM proposed, and this final rule revises and relocates each of these § 165.160 provisions to a single New York Marine Inspection Zone and Captain of the Port safety and security zone regulation found at 33 CFR 165.169. This regulatory change will consolidate similar regulations for the benefit of enforcement authorities and the regulated public.

*Commercial Waterfront Facilities:* As discussed earlier in this preamble, the safety and security zones around commercial waterfront facilities were made permanent by publication of a final rule in the **Federal Register** on January 22, 2003. This measure provides safety and security zones for, "all piers, wharves, docks and similar structures to which barge, ferry or other commercial vessels may be secured" (see, 33 CFR 165.169(a)(3)). These measures were deemed appropriate based on the threat and risk analyses available to the Captain of the Port at the time. The notice of proposed rulemaking for that

regulatory action was published in the **Federal Register** on November 27, 2002 (67 FR 70892), in preparation for the expiration of the temporary safety and security zone regulations on December 31, 2002.

On November 25, 2002, President George W. Bush signed into effect Public Law 107-295, the Maritime Transportation Security Act (MTSA) of 2002, which required the Secretary of the Department in which the Coast Guard is operating to issue an interim rule as a temporary regulation to implement the Port Security Section of the Act. To meet this requirement, on July 1, 2003, the Coast Guard published six interim rules in the **Federal Register** (68 FR 39240, 39284, 39292, 39315, 39338, and 39353). To determine the applicability of these regulations to waterfront facilities, the Coast Guard conducted an exhaustive, multi-tiered risk analysis. The details of this assessment can be found in the "Applicability of National Maritime Security Initiatives" section of the interim rule titled "Implementation of National Maritime Security Initiatives" (68 FR 39240, July 1, 2003).

On October 22, 2003 the Coast Guard published a final rule, entitled "Facility Security" in the **Federal Register** (68 FR 60515), establishing permanent regulations for facility security at 33 CFR part 105. These MTSA regulations included specific measures for security at a particular group of waterfront facilities, based on the comprehensive risk-based assessment referenced above. Section 105.200 of 33 CFR requires owners or operators of these facilities to, among other things, designate Facility Security Officers (FSO) for facilities, develop Facility Security Plans (FSP) based on security assessments and surveys, implement security measures specific to the facility's operations, and comply with Maritime Security Levels. Additionally, 33 CFR 105.275 mandates that facilities subject to the MTSA must have the capability to continuously monitor, among other things, the facility's approaches on land and water, and vessels at the facility and areas surrounding the vessels.

A large number of areas that currently fall within the definition of Commercial Waterfront Facility under 33 CFR 165.169, and are thereby protected by a Coast Guard safety and security zone, are areas proposed for or currently designed to provide recreational and public waterway access. A great variety of piers, wharves, docks, and bulkheads, designed and utilized primarily as recreational areas are capable of accepting commercial vessels as currently defined in regulation, even

though such operations rarely, if ever, occur. Safety and security zones in these areas unduly restrict the general public's access, cause confusion as to which areas are regulated, and create significant, unwarranted enforcement burdens on Coast Guard and local law enforcement resources. Furthermore, Resolution 05-01 of the U.S. Coast Guard Commandant's Navigation Safety Advisory Council (NAVSAC), contained in the September 2005 NAVSAC Meeting Summary (available online at <http://homeport.uscg.mil>), recommended that the Coast Guard conduct a review of safety and security zones to ensure modification or removal of zones that unduly restrict commercial vessel operations or are no longer needed following enactment of the MTSA, 2002 regulations.

For these reasons, we are revising the language governing facility safety and security zones to remove the broad definition currently contained within the regulations, largely replacing it with the class of facilities determined to require additional security measures by the MTSA regulations developed for this purpose. This tailored class of commercial waterfront facilities would only include those facilities regulated by the MTSA facility security regulations codified in 33 CFR part 105 and those facilities designated as a "public access facility" under that definition in 33 CFR 101.105. For public identification purposes, all of these facilities are required to have signs posted along the shoreline, facing the water, indicating that there is a 25-yard waterfront security zone surrounding the facilities.

**Liberty and Ellis Islands:** The current 150-yard security zones around Liberty and Ellis Islands became effective on January 1, 2003, as enacted by a final rule entitled "Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone" published in the **Federal Register** (68 FR 2886, January 22, 2003). On October 1, 2003, the United States Department of the Interior's National Park Service requested the 150-yard security zones around Liberty and Ellis Islands, currently found in 33 CFR 165.169(a)(4), be expanded to 400 yards. Additionally, they requested that all recreational vessels and other watercraft be prohibited from anchoring in the area surrounding Liberty and Ellis Islands or at least be restricted to anchoring no closer than 1,000 yards from the islands. They reported that the high volume of boat traffic still authorized to operate in close proximity of the two islands made it difficult to provide a secure environment for these historic sites and

the public that routinely visits them. This request was submitted via the U.S. Park Police (USPP) who is responsible for security at the two islands.

On November 25, 2003, the Coast Guard met representatives from the USPP to discuss their proposal. The Coast Guard and USPP agreed upon the following conditions for the proposed expansion of the boundary of the safety/security zone from 150 yards to 400 yards:

- Marine events that have normally been held within 400 yards of either island would be allowed to continue after the marine event application is approved by the Captain of the Port New York.
- No new marine events would be authorized without collaborative approval of both the USCG and USPP.
- The USPP would provide unclassified information regarding their blast radius data and security information for public dissemination.
- The USPP would share technology links with the Coast Guard Vessel Traffic Center New York to enhance security.
- An additional meeting would be scheduled with annual event sponsors and sailing schools to discuss these issues and to provide alternative locations for their vessels and events.

On December 4, 2003, the Coast Guard met with the USPP, Manhattan Sailing Club, Manhattan Sailing School, and the Sandy Hook Bay Catamaran Club. The Jersey City Office of Cultural Affairs and the Liberty World Challenge sponsor were invited but could not attend. Over 50 marine events are held each year within the proposed expanded security zone. Six event sponsors hold most of these events and the majority of these are sponsored by the Manhattan Yacht Club in the form of weekly sailing regattas.

The USPP reiterated their request for the zone expansion to 400 yards due to a threat assessment conducted by the U.S. Department of Defense's Defense Threat Reduction Agency. The analysis concluded that an explosion from a vessel within close proximity to Liberty or Ellis Island would result in loss of life and injury to visitors and staff on the islands as well as severe structural damage to the Statue of Liberty and numerous historic buildings on Ellis Island. These include the American Family Immigration History Center containing manifests of 25 million immigrants, passengers, and crew members who entered New York Harbor between 1892 and 1924 and 30 other remaining buildings planned for reuse. The plan is available online at: <http://parkplanning.nps.gov/projectHome>.

[cfm?parkID=277&projectId=18591](http://parkplanning.nps.gov/projectHome?parkID=277&projectId=18591). Information from the Defense Threat Reduction Agency assessment is available in the docket available at the location under **ADDRESSES**. The proposed expanded security zone would greatly reduce the potential impacts of such a blast and improve the USPP's response capability to incursions of the security zone.

The Coast Guard and USPP agreed to the following conditions pending establishment of the proposed expanded security zone:

- Annual events would be authorized upon review, and approval of, the sponsor's marine event application. This review would additionally include a review of all personnel and equipment participating within the zone using the measures for granting security zone access at all other security zones within the Captain of the Port Zone.
- Only new events with a regional or national significance would be authorized and only after both the Coast Guard and USPP approve the request.
- The Statue of Liberty Race, sponsored by the Sandy Hook Bay Catamaran Club, would be required to place buoys at the site of the current 150-yard security zone to help participants maintain a distance of 150 yards from the Islands during the race.

At the December 4, 2003 meeting, and in a follow-up letter dated December 8, 2003, the Manhattan Sailing Club Commodore questioned the effectiveness of the proposed zone in a realistic threat situation. He believed the current 150-yard security zones were to be temporary measures and was adamantly opposed to their expansion. He stated that the protected cove north of Ellis Island is critical to all local sailing school operations as it provided the only waters in the harbor out of the commercial shipping lanes with enough depth and protection from the current. He stated that the proposed expanded zone would force recreational vessels into the shipping channels and "significantly impact the quality of life" of NYC recreational sailors. He also stated that security measures had been reduced at the Holland Tunnel and the AT&T Building while heavy barriers at the New York Stock Exchange had been replaced with attractive iron railings and that there had been no new justification to put forth any expansion of the security zones in New York Harbor. Additionally, he asked why there is any security zone around Ellis Island as it is not the same target threat and does not have the same security needs.

In a subsequent follow-up letter dated December 18, 2003, the Commodore

stated that the sailing club held an emergency Board of Directors meeting on December 15, 2003. It was the Board's opinion that the security zones should not be increased as they had not seen any evidence explaining how an increase would be in the best interests of the harbor. Along with the previously stated remarks they also stated the club had invested more than \$500,000 in their mooring barge to the north of Ellis Island for club activities and that any expansion of the security zone or rescinding of the Federally Designated Anchorages would make it no longer feasible to moor their sailing barge in the cove and would jeopardize their ability to generate income to repay construction loans.

On December 29, 2003, the USCG responded to the two letters submitted by the Manhattan Sailing Club. The Coast Guard stated that the disestablishment of the current 150-yard security zones around Liberty and Ellis Islands were not feasible at that time and would likely remain in effect for an undetermined time.

On January 14, 2004, the USCG notified the USPP, in consultation with the First Coast Guard District Homeland Security Office, that the USCG would propose the security zones be expanded around Liberty and Ellis Islands out to 400 yards, with the exception that the northern boundary of Ellis Island would only extend 250 yards, being that from a maritime Homeland Security perspective Ellis Island is not as great a security risk as is the Statue of Liberty. The increase of 100 yards on the north side of Ellis Island would allow for the continued recreational use of the Manhattan Sailing Club barge by the sailing community.

On January 27, 2004, the USPP submitted a letter to the USCG reiterating their request for a 400-yard security zone around Liberty and Ellis Islands due to the Blast Analysis discussed above. The USPP also confirmed they would notify the USCG regarding special events that involve either Liberty or Ellis Island when additional ferries would be in use.

On February 24, 2004, the Coast Guard received another letter from the USPP. The letter stated that although the 400-yard zone around both islands was preferred, the USPP felt the 250-yard zone north of Ellis Island was acceptable and would hopefully satisfy the concerns of all interested parties. The USPP agreed to host a public meeting with interested members of the maritime community to discuss the security zone expansion around Liberty and Ellis Island, and provide the Coast Guard with final recommendations

following that meeting. Subsequently, the USPP became involved in extensive shore side security improvements surrounding the reopening of Liberty Island to visitors, and the public meeting concerning waterside security enhancements was postponed pending final resolution of those more immediate security concerns.

In September 2005, presentations concerning proposed changes to the current security zones were given to the New York/New Jersey Area Maritime Security Committee and the Harbor Safety, Navigation and Operations Committee. Other stakeholders in the maritime community were also reengaged. Following a meeting between the Coast Guard, the USPP, and the Department of Defense (DoD) Threat Reduction Agency, new security zone dimensions were developed that balanced the security requirements of the USPP with the desires of the maritime community.

As an outcome of these discussions, the Coast Guard proposed to merge the existing Liberty and Ellis Island security zones, concurrent to an expansion of the Liberty Island Zone, in order to provide the minimum distances required to ensure the protection of these national monuments.

Following publication of the NPRM, written comments were received regarding the proposed expansion of the Liberty and Ellis Island security zones and concern was expressed as to the impact on recreational boaters and the effects that the expanded zones would have on navigation safety. Based on comments received we are withdrawing our proposed expansion of the Ellis and Liberty Island security zones as outlined in the Discussion of Comments and Changes section and have removed the Liberty and Ellis Island Security Zone expansion provision from this final rule. The current Liberty and Ellis Island security zone remains in effect.

*NYC Passenger Ship Terminal:* The NYC Passenger Ship Terminal safety and security zones are currently codified at 33 CFR 165.169(a)(6). The area covered by the current safety and security zone extends approximately 250 yards from portions of the facility. However, this zone is only enforced when cruise ships are present.

In the interest of protecting this high-interest facility, we are revising the regulation to make this zone subject to enforcement at all times. In so doing, and to provide for the safe use of the waterway by all parties, the dimensions of this permanent zone are significantly reduced to reflect the current protection needs of the Passenger Ship Terminal.

The revision reduces the zone size to extend up to 150 yards into the waterway. The northern boundary of the zone is being moved from Pier 96 south to approximately 50 yards north of Pier 92, opening a 50-yard band of waterway for public access to the south face of Pier 94. The southern boundary is being moved north from Pier 84 to include a 25 yard perimeter south of the Intrepid Sea, Air, and Space Museum, opening a 50-yard band of waterway for public access north of Pier 84.

A permanently activated zone in this area is necessary, in part, due to the varied mooring configurations of cruise ships parallel to and inside the Passenger Ship Terminal Piers. Vessels transiting on the Hudson River cannot always easily judge whether ships are berthed, and thereby whether the current safety and security zone is activated and therefore subject to enforcement. This fact also justifies the maintenance of a zone greater than the 25-yard MTSA Facility zone, sufficient for other cruise ship berthing facilities at times where no cruise ship is present. A permanent zone also allows the FSO at the Passenger Ship Terminal to work with the Captain of the Port to remove suspicious vessels, even when no cruise ship is at berth.

*LHG Vessels:* Safety and security zones for LHG Vessels are currently codified in 33 CFR 165.160. For reasons discussed elsewhere in this preamble, we are moving these regulations with revisions to the regulations found at 33 CFR 165.169. Revisions are made to provide a detailed definition of "LHG Vessel," and to ensure greater standardization of and compliance with the regulations. The language regarding LHG Facilities is being removed, as these facilities will continue to be protected by safety and security zones contained in 33 CFR part 105 (MTSA, 2002 regulations).

*Cruise ships:* Though no specific regulation exists within the New York Captain of the Port Zone for cruise ships, 33 CFR 165.160 does have provisions for Designated Vessels, among which are vessels with a passenger capacity of over 500. Following many other Captains of the Port throughout the Nation, we are incorporating specific language for the protection of the many cruise ships and high capacity passenger vessels that visit the Port of New York and New Jersey.

The current Designated Vessel safety and security zones require the Captain of the Port to specifically designate a particular vessel to be covered by a Designated Vessel safety and security zone. This rule defines the term "cruise

ship" so as to include that class of vessel readily identifiable to the regulated public as such. This rule also renders the safety and security zones activated and subject to enforcement at all times when such a vessel is within the navigable waters of the United States (see 33 CFR 2.36(a) to include the 12 NM territorial sea) in the New York Captain of the Port Zone (33 CFR 3.05–30). This safety and security zone is necessary to provide security protection for cruise ships at berth in locations where full, permanent security zones around the facilities would be overly restrictive when no cruise ship is present, and thereby not justified in the interest of the Port as a whole. This change decreases the size of the security zone around the NY Passenger Ship Terminal when passenger ships are not docked there as a reduced zone is sufficient to provide the necessary facility security. The reduced size of the zone allows for greater movement of vessels in a highly congested area. Similarly, the provision of a security zone around cruise ships within the New York Captain of the Port Zone removes the need to maintain a security zone around the Brooklyn Cruise Terminal on Buttermilk Channel when cruise ships are not present. Otherwise, to establish a similar permanent security zone around the Brooklyn Cruise Terminal on Buttermilk Channel would effectively close down 75 percent of the 500-foot-wide 40-foot project channel. This would force deeper draft vessels to transit between Governors Island and The Battery in Manhattan enroute to facilities on the East River and create numerous close quarters passing situations between the ships and commuter ferry operations in the vicinity of The Battery.

Additionally, vessels calling on the Red Hook Container Terminal, adjacent to the Brooklyn Cruise Terminal, would then need to navigate around Dimond Reef which is not considered a safe navigational practice for deep draft vessels by any federal or state licensed pilot organization.

*Designated Vessels:* Currently, under the regulations found at 33 CFR 165.160, the Captain of the Port may designate certain vessels to receive a 100-yard safety and security zone. For reasons discussed elsewhere in this preamble, we are revising these regulations and moving them to 33 CFR 165.169(a)(15). The regulation will limit the type of vessels that may be so designated to small passenger vessels (authorized to carry more than 400 passengers and less than 200 feet in length), vessels carrying foreign dignitaries or government officials

requiring protection, vessels carrying petroleum products, chemicals or other hazardous cargo, including, but not limited to, cargo ships and barges carrying bridge spans and large shore side container cranes that significantly increase the length or beam of the vessel and decrease its maneuverability. We are removing the existing language regarding Designated Vessels as being certificated to carry 500 or more passengers as these types of vessels will be covered in the regulation for Cruise Ships. These Designated Vessels are readily recognizable either by the large crane or bridge structures onboard or, for the vessels carrying flammable or hazardous cargo, by the flying of the Bravo flag (red international signal flag) from the outermost halyard (above the pilot house) where it can most easily be seen. The Captain of the Port will also notify the maritime community of periods during which this zone is being enforced by methods in accordance with 33 CFR 165.7. Similar to the rule for cruise ships, these safety and security zones will be activated and subject to enforcement at all times when such a vessel is within the navigable waters of the United States in the New York Captain of the Port Zone.

*134th Street Pipeline Metering and Regulating Station:* Although not specifically regulated under MTSA 2002, we are creating a specific 25-yard security zone surrounding the 134th Street Pipeline Metering and Regulating Station Pier. There is currently a security zone around this location that was established under a regulation for commercial waterfront facilities found in 33 CFR 165.169(a)(3). Under a change to that regulation discussed earlier in this preamble, that coverage would be terminated as this pipeline station does not currently fall under the provisions of 33 CFR part 105 (MTSA Facilities). A security zone at this facility, which is primarily regulated by the Federal Energy Regulatory Commission, is necessary to ensure the continued safety and security of navigation and the large number of industrial, commercial, and residential customers that would be affected by damage to this pipeline.

The Captain of the Port will be assisted in monitoring the safety and security zone by the pipeline operating company and the New York City Police Department. The security zone establishes unambiguous Federal regulation to allow the Captain of the Port to assist pipeline security personnel and NYPD in preventing unauthorized waterside access to this facility.

*Naval Weapons Station Earle:* The Coast Guard first established a Security

Zone restriction in this location on July 1, 1972 (under 33 CFR 127.301, 37 FR 16675, Aug. 18, 1972). This regulation was subsequently re-designated by the Coast Guard on June 30, 1982 (33 CFR 165.301, 47 FR 29659, July 8, 1982) and, again on July 6, 1987 (52 FR 25216). This security zone is currently codified at 33 CFR 165.130.

On July 28, 2003, the United States Army Corps of Engineers created a Restricted Area around this Naval installation, published at 33 CFR 334.102 (68 FR 37970, June 26, 2003). The Army Corps of Engineers' Restricted Area covers a portion of the waterway slightly larger than the current Coast Guard Security Zone. We are modifying the Coast Guard Security Zone found at 33 CFR 165.130 to align with that of the Army Corps of Engineers to provide unambiguous concurrent enforcement capability for both Coast Guard and DoD patrol craft.

*Additional Consistency Modifications:* We are tailoring the scope of specific safety and security zones to optimize effective enforcement and to harmonize these zones with the assessment of facilities covered by 33 CFR part 105 (MTSA Regulations) that warrant increased security protection. In addition, the safety and security zones described in 33 CFR 165.160 are being revised and moved into 33 CFR 165.169 to consolidate similar safety and security zone-related regulations within one New York Marine Inspection and Captain of the Port Zone safety and security zone regulation. Once consolidated, the existing regulations in 33 CFR 165.160 are being removed.

*Waterfront Heliports:* Additionally, although not specifically regulated under MTSA 2002, we are establishing 25-yard security zones surrounding the four waterfront heliports currently operating at Manhattan Island and Jersey City, New Jersey by creating a separate regulation for these heliports in 33 CFR 165.169(a)(17). These security zones are currently covered under regulations for commercial waterfront facilities in 33 CFR 165.169(a)(3). However, under the changes to that regulation discussed above, the coverage would inadvertently be terminated because not all heliports currently fall under the provisions of 33 CFR part 105 (MTSA Facilities). Therefore, this section is necessary to ensure security zones for these facilities remain in place as although the waterfront heliports are primarily regulated by the Transportation Security Administration, the security zones are necessary to ensure the continued safety and security of both general aviation as well as

recently-approved and planned commuter flight services.

The Captain of the Port will be assisted in monitoring the safety and security zones around these heliports by the FSO or other person responsible for security at each facility. The security zone will establish unambiguous Federal regulation to allow the Captain of the Port to assist facility security personnel in preventing unauthorized waterside access to these facilities.

#### Discussion of Comments and Changes

The National Oceanic and Atmospheric Administration (NOAA) submitted two recommended navigation chart corrections. One correction is to one position of the Ellis Island security zone that is not changing in this Final Rule. The original Coast Guard security zone at Ellis Island was published in the Code of Federal Regulations as being within 150 yards of the island with no listed positions. NOAA published this security zone on the respective charts using their more accurate charting software. Due in part to the public comments received we are withdrawing the expansion of the Ellis and Liberty Islands security zones from this rulemaking for further consideration. The second chart correction submitted by NOAA was for the Naval Weapons Station Earle, NJ security zone in Sandy Hook Bay. We are revising our final rule to list the same positions published by the U.S. Army Corps of Engineers (ACOE) in 33 CFR 334.102 as our intention was always to have the security zone correspond to the ACOE charted Restricted Area.

One commenter supported the establishment of the 25-yard security zones around the waterfront heliports.

One commenter requested that the 100-yard security zones around Liquefied Hazardous Gas (LHG) vessels, Cruise Ships, and Designated Vessels be revised to allow for vessels constrained by their draft to be authorized to transit through the security zone as long as they remain within the navigable channel, maintain the maximum safe distance from the vessel and do not stop or loiter within the zone unless the security zone is broadcast over VHF radio and is accompanied by a patrol vessel displaying a flashing blue light as required by 33 CFR 88.11. The commenter noted that this is currently authorized for vessels transiting past 33 CFR Part 105 Facilities and Bridge Piers and Abutments within the Coast Guard Sector New York area of responsibility. Similar conditions also apply to the Naval Vessel Protection Zones codified at 33 CFR 165.2025.

We currently issue a marine broadcast by VHF radio for all LHG vessel transits, provide Coast Guard escort vessels for the LHG vessel, and do not authorize vessels to transit through the security zone due to the nature of the product carried and the extensive damage to the port that could be caused by an attack on the vessel. This has been the Coast Guard's policy and procedures since before the 9/11 terrorist attacks and we will not further relax these conditions at this time. The width of the Federal Channels and waterways that cruise ships currently transit through are 1,000 feet wide in Buttermilk Channel, 2,000 feet wide in Anchorage Channel, and 2,700 feet wide in the Hudson River. There is sufficient distance for the commenter's smaller vessels to transit around the cruise ships in these channels or to transit around Governors Island for vessels that do not want to transit through Buttermilk Channel when cruise ships are transiting through, or are docked, at the adjacent Brooklyn Cruise Terminal. Vessels that are constrained by their draft from transiting outside of these channels will still be required to maintain a distance of 100 yards from all cruise ships and should check in with VTS NY on VHF CH 11, 12, or 14 for current restrictions if they are not already Vessel Movement Reporting Users.

The Coast Guard agrees with this comment in regards to Designated Vessels (33 CFR 165.169(a)(15)). The final rule is changed from the NPRM to state that vessels that are constrained by their draft from leaving the channel may transit through the zone for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the Designated Vessel, and do not stop or loiter within the zone.

This transit waiver was inadvertently deleted from the revised Part 105 Facilities regulation in 33 CFR 165.169(a)(3) in this Notice of Proposed Rulemaking. This was not the Coast Guard's intention and the waiver for vessels to transit through the 25-yard security zone surrounding Part 105 facilities is being inserted in the final rule as 33 CFR 165.169(a)(3)(iii)(C).

We received nine comments from Human Powered Vessel (HPV—Canoes and Kayaks) organizations and individuals and two comments from yacht clubs and individuals regarding the expansion of the security zones around Ellis and Liberty Islands. The comments raised the concerns of HPVs and sailboats being forced to increase the amount of time they navigate in the Federal Anchorage Channel due to the

security zone expansion. This would create increased interactions between these recreational boaters in Anchorage Channel with ships, tugs and barges, the Staten Island Ferry and other commuter ferries. Additionally, the HPV comments were concerned with not being able to transit between Ellis and Liberty Islands or along the Liberty State Park shoreline. They stated these are protected waters where they often rest prior to re-crossing Anchorage Channel. Many of the comments also questioned the need for the current 150-yard security zone 7 years after the terrorist attacks. In light of the public comments received we are changing the final rule from the NPRM by withdrawing the expansion of the Ellis and Liberty Islands security zones from this rulemaking. If changes to the current Ellis and Liberty Islands 150-yard security zones are proposed in the future, a new Notice of Proposed Rulemaking will be published in the **Federal Register**.

Lastly, pending further review, we have removed the portions of this rule which proposed that individuals submit specific information to the Coast Guard Captain of the Port, a designated representative or designated on-scene patrol personnel as a method of obtaining entry into the safety and security zones identified in § 165.169. Individuals requesting entry into the safety and security zones identified in § 165.169 will still be required to gain authorization for entry into the zones prior to entering the same, and as such they should ensure that they comply with this final rule. After completing review we may amend this final rule in a manner that will identify the specific information required to gain entry into the safety and security zones in § 165.169.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the following facts. Access to all zones modified within the regulation may be granted through coordination with the Captain of the Port. With regard to the changes to the Commercial Waterfront Facilities, this rule reduces the number of safety and security zones around commercial waterfront facilities, thereby reducing the level of regulatory impact. The proposed expansion of the Ellis and Liberty Islands security zones in the NPRM has been withdrawn in this Final Rule. With regard to the changes for the New York City Passenger Ship Terminal safety and security zone, the rule reduces the size of the regulated area. With regard to the changes for the inclusion of LHG Vessels, the regulation implements less restrictive regulations for those currently in effect. With regard to the addition of regulations relating to cruise ships, the rule relocates the current regulation regarding cruise ships contained in 33 CFR part 169.160 to the new section with modifications to the definition. This change does not create a new type of security zone; rather, it moves an existing regulation to another section of the regulations, thereby creating no significant change for regulated entities. With regard to the changes for the inclusion of the 134th Street Pipeline Metering and Regulating Station pier, vessels will be able to transit around the zone with little to no increase in transit time. With regard to the changes for the modification to the Security Zone at Naval Weapons Station Earle, Sandy Hook Bay, New Jersey, this regulation only aligns restrictions applying to a portion of the waterway already restricted by other Federal regulation.

#### **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 may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of the New York Captain of the Port Zone deemed by the Captain of the Port to present an unacceptable level of

risk to the safety and security of the general public. However, these safety and security zones would not have a significant economic impact on a substantial number of small entities for the reasons discussed in the Regulatory Planning and Review section above.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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.

#### **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 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 create an environmental risk to health or risk to safety that may 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, 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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 rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction 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 (34)(g), of the Instruction, from further environmental documentation. This regulation changes current safety and security zones and disestablishes other safety and security zones; therefore, paragraph (34)(g) of the instruction applies.

An environmental analysis checklist and a categorical exclusion determination are 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.130, revise paragraph (a) to read as follows:

#### § 165.130 Sandy Hook Bay, New Jersey—security zone.

(a) *Naval Ammunition Depot Piers.* The navigable waters within the following boundaries are a security zone: A line beginning on the shore at

40°25'55.6" N, 074°04'31.4" W; thence to 40°26'54.0" N, 074°03'53.0" W; thence to 40°26'58.0" N, 074°04'03.0" W; thence to 40°27'56.0" N, 074°03'24.0" W; thence to 40°27'28.5" N, 074°02'10.4" W; thence to 40°26'29.5" N, 074°02'51.2" W; thence to 40°26'31.4" N, 074°02'55.4" W; thence to 40°25'27.1" N, 074°03'39.7" W; thence northwest along the shoreline to the beginning point.

\* \* \* \* \*

#### § 165.160 [Removed]

■ 3. Remove § 165.160.

#### § 165.169 [Amended]

■ 4. In § 165.169—

■ a. Revise paragraphs (a)(3), (a)(6), and (a)(12) to read as follows;

■ b. Add paragraphs (a)(13) through (a)(17) to read as follows; and

■ c. Remove paragraphs (b)(3) through (b)(5), and (c):

#### § 165.169 Safety and Security Zones: New York Marine Inspection Zone and New York Captain of the Port Zone.

(a) \* \* \*

(3) *Part 105 Facilities.* (i) *Definition.* For the purposes of this section, *Part 105 Facility* means any facility subject to the regulations contained in 33 CFR part 105, including those designated as “Public Access Facilities” as defined in 33 CFR 101.105. For public identification purposes, all of these facilities are required to have signs posted along the shoreline, facing the water, indicating that there is a 25 yard waterfront security zone surrounding the facilities.

(ii) *Location.* All waters within 25 yards of each Part 105 Facility. When a barge, ferry, or other commercial vessel is conducting transfer operations at a Part 105 Facility, the 25-yard zone is measured from the outboard side of the commercial vessel.

(iii) *Regulations.* (A) Vessels not actively engaged in passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations, or docking or undocking operations, authorized in advance by the Facility Security Plan, Facility Security Officer or designated representative, must not enter within any part of a zone described in paragraph (a)(3) of this section without the express permission of the Coast Guard Captain of the Port, a designated representative or designated on-scene patrol personnel.

(B) Persons seeking Captain of the Port permission to enter within a particular zone for official business other than authorized passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations or authorized docking or undocking

operations may request such authorization by contacting:

Commander Coast Guard Sector New York, via the Sector Command Center (SCC), at: 212 Coast Guard Drive, Staten Island, NY 10305, or via fax to (718) 354–4125 or by contacting the Sector Command Center Duty Officer by phone at: (718) 354–4353.

(C) Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit so long as they remain within the navigable channel, maintain the maximum safe distance from the Part 105 facility, and do not stop or loiter within the zone.

\* \* \* \* \*

(6) *New York City Passenger Ship Terminal, Hudson River, NY.* (i) *Location.* All navigable waters of the Hudson River bound by the following points: From the point 40°46'09" N, 073°59'48.7" W on the seawall midway between Pier 92 and 94, thence northwest to approximate position 40°46'14" N, 074°00'00.9" W, approximately 125 yards northwest of Pier 92, thence southwest to approximate position 40°45'56.7" N, 074°00'15.3" W, approximately 150 yards west of Pier 86, thence east to the seawall between Pier 84 and Pier 86 at approximate position 40°45'49.6" N, 073°59'58.1" W (NAD 1983), thence northeast along the shoreline to the point of origin.

(ii) *Regulations.* Vessels not actively engaged in passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations, or docking or undocking operations, authorized in advance by the Facility Security Plan, Facility Security Officer or designated representative, must not enter within any part of a zone described in paragraph (a)(6) of this section without the express permission of the Coast Guard Captain of the Port, a designated representative or designated on-scene patrol personnel. Persons seeking Captain of the Port permission to enter within the zone described in paragraph (a)(6) of this section for official business other than authorized passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations or authorized docking or undocking operations may request such authorization by contacting: Commander Coast Guard Sector New York, via the Sector Command Center (SCC), at: 212 Coast Guard Drive, Staten Island, NY 10305, or via fax to (718) 354–4125 or by contacting the Sector Command Center Duty Officer by phone at: (718) 354–4353.

\* \* \* \* \*



(12) *Approaches to New York, Atlantic Ocean.* (i) *Location.* All waters of the Atlantic Ocean between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21'29.9" N, 073°44'41.0" W, thence to 40°21'04.5" N, 073°45'31.4" W, thence to 40°15'28.3" N, 073°44'13.8" W, thence to 40°15'35.4" N, 073°43'29.8" W, thence to 40°19'21.2" N, 073°42'53.0" W, (NAD 1983) thence to the point of origin.

(ii) *Enforcement period.* Enforcement periods for the zone in paragraph (a)(12) of this section will be announced through marine information broadcast or other appropriate method of communication and the zone is activated whenever a vessel is anchored in the area described in paragraph (a)(12)(i) or a Coast Guard patrol vessel is on-scene.

(iii) *Regulations.* (A) The area described in paragraph (a)(12) of this section is not a Federal Anchorage Ground. Only vessels directed by the Captain of the Port or his or her designated representative to enter this zone are authorized to anchor here.

(B) Vessels do not need permission from the Captain of the Port to transit the area described in paragraph (a)(12) of this section during periods when that security zone is not being enforced.

(13) *Liquefied Hazardous Gas (LHG) Vessels.* (i) *Definitions.* For the purposes of this section, *LHG Vessel* means any vessel constructed or converted to carry, in bulk, any of the flammable or toxic products listed in 33 CFR 127.005, Table 127.005.

(ii) *Location.* All waters within a 200-yard radius of any LHG Vessel that is underway and all waters within a 100-yard radius of any LHG Vessel that is moored or at anchor.

(iii) *Enforcement period.* The zone described in paragraph (a)(13) of this section will be activated upon entry of a LHG Vessel into the navigable waters of the United States (see 33 CFR 2.36(a) to include the 12 NM territorial sea) in the New York Captain of the Port Zone (33 CFR 3.05–30). The LHG Vessel will be identifiable by the requirement to fly the Bravo flag (red international signal flag under Pub. 102, International Code of Signals) from the outermost halyard (above the pilot house) where it can most easily be seen. In addition to visual identification of the LHG Vessel, the Captain of the Port will notify the maritime community of periods during which this zone will be enforced by methods in accordance with 33 CFR 165.7.

(14) *Cruise ships.* (i) *Definition.* For the purposes of this section, *cruise ship*

means a passenger vessel as defined in 46 U.S.C. 2101(22), that is authorized to carry more than 400 passengers and is 200 or more feet in length. A cruise ship under this section will also include ferries as defined in 46 CFR 2.10–25 that are authorized to carry more than 400 passengers and are 200 feet or more in length.

(ii) *Location.* All waters within a 100-yard radius of any Cruise ship whether underway, anchored, or at berth.

(iii) *Enforcement period.* The zone described in paragraph (a)(14) of this section will be activated upon entry of any cruise ship into the navigable waters of the United States (see 33 CFR 2.36(a) to include the 12 NM territorial sea) in the New York Captain of the Port Zone (33 CFR 3.05–30). This zone will remain activated at all times while the cruise ship is within the navigable waters of the United States in the New York Captain of the Port Zone.

(15) *Designated Vessels.* (i) *Definition.* For the purposes of this section, *Designated Vessels* are vessels carrying government officials, dignitaries, or other passengers requiring protection by the U.S. Secret Service, or other Federal, State or local law enforcement agency; barges or ships carrying petroleum products, chemicals, or other hazardous cargo; and passenger vessels (as defined in 46 U.S.C. 2101(22)), that are authorized to carry more than 400 passengers and are less than 200 feet in length.

(ii) *Location.* All waters within a 100-yard radius of any Designated Vessel.

(iii) *Enforcement period.* The zone described in paragraph (a)(15) of this section will be activated upon entry of any Designated Vessel into the navigable waters of the United States (see 33 CFR 2.36(a) to include the 12 NM territorial sea) in the New York Captain of the Port Zone (33 CFR 3.05–30). This zone will remain activated at all times while the Designated Vessel is within the navigable waters of the United States in the New York Captain of the Port Zone. The Designated Vessels, including ships and barges carrying petroleum products, chemicals, or other hazardous cargo will be recognized by the requirement to fly the Bravo flag (red international signal flag under Pub 102, International Code of Signals) from the outermost halyard (above the pilot house) where it can most easily be seen. Vessels that are constrained by their draft from leaving the channel may transit through the zone for the sole purpose of direct and expeditious transit so long as they remain within the navigable channel, maintain the maximum possible safe distance from the Designated Vessel,

and do not stop or loiter within the zone. Designated Vessels carrying government officials, dignitaries, or other passengers requiring protection, and passenger vessels authorized to carry more than 400 passengers and are less than 200 feet in length will be recognizable by their being escorted by a federal, state or local law enforcement or security vessel. The law enforcement or security vessel will be identifiable by flashing light, siren, flags, markings and/or through other means that clearly identify the vessel as engaged in law enforcement or security operations.

(16) *134th Street Pipeline Metering and Regulating Station.* (i) *Location.* All waters of the Hudson River within 25 yards of the 134th Street Pipeline Metering and Regulating Station.

(ii) *Regulations.* (A) Vessels not actively engaged in facility maintenance or inspection operations authorized in advance by the Pipeline Security Officer or designated representative, or authorized docking or undocking operations, must not enter within any part of a zone described in paragraph (a)(16) of this section without the express permission of the Coast Guard Captain of the Port, a designated representative or designated on-scene patrol personnel.

(B) Persons seeking Captain of the Port permission to enter within a particular zone for official business other than authorized passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations or authorized docking or undocking operations may request such authorization by contacting: Commander Coast Guard Sector New York, via the Sector Command Center (SCC), at: 212 Coast Guard Drive, Staten Island, NY 10305, or via fax to (718) 354-4125 or by contacting the Sector Command Center Duty Officer by phone at: (718) 354-4353.

(17) *Waterfront Heliports.* (i) *Location.* All waters of the East River within 25 yards of the East 34th Street and Wall Street Heliports, and all waters of the Hudson River within 25 yards of the West 30th Street Heliport and the Jersey City/Newport Helistop, areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings. When a barge, ferry, or other commercial vessel is conducting transfer operations at a waterfront heliport, the 25-yard zone is measured from the outboard side of the commercial vessel.

(ii) *Regulations.* (A) Vessels not actively engaged in passenger, cargo, provision, facility maintenance or

inspection, bunker transfer operations, or docking or undocking operations, authorized in advance by the Facility Security Plan, Facility Security Officer or designated representative, must not enter within any part of a zone described in paragraph (a)(17) of this section without the express permission of the Coast Guard Captain of the Port, a designated representative, or designated on-scene patrol personnel.

(B) Persons seeking Captain of the Port permission to enter within a particular zone for official business other than authorized passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations or authorized docking or undocking operations may request such authorization by contacting: Commander Coast Guard Sector New York, via the Sector Command Center (SCC), at: 212 Coast Guard Drive, Staten Island, NY 10305, or via fax to (718) 354-4125 or by contacting the Sector Command Center Duty Officer by phone at: (718) 354-4353.

(C) Vessels entering or departing the marina north of the Newport Helistop are authorized to transit through the safety/security zone around the Newport Helistop during their transit, provided that helicopters are not taking off or landing. No loitering or unnecessary delay is authorized during these transits.

\* \* \* \* \*

Dated: November 3, 2008.

**Robert R. O'Brien, Jr.,**

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

**Editorial Note:** This document was received in the Office of the Federal Register on Tuesday, February 10, 2009.

[FR Doc. E9-3162 Filed 2-12-09; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 52

[EPA-HQ-OAR-2003-0064, FRL-8773-2]

RIN 2060-AL75

### Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Reconsideration.

**SUMMARY:** On January 30, 2009, the Natural Resources Defense Council ("NRDC") submitted a petition for reconsideration (the "NRDC Petition") of the rule addressing "aggregation" under the Prevention of Significant Deterioration and the Nonattainment New Source Review programs (collectively, "NSR") published in the **Federal Register** on January 15, 2009. This rule (the "NSR Aggregation Amendments") described when a source must combine ("aggregate") nominally-separate physical changes and changes in the method of operation for the purpose of determining whether they are a single change under NSR and result in a significant emissions increase.

In response to the NRDC Petition, having found that the petitioner has raised objections to the rule that arose after the comment period and that are of central relevance to the rule, the EPA is convening a proceeding for reconsideration as provided for under the Clean Air Act section 307(d)(7)(B). In the near future, EPA will publish a notice in the **Federal Register** establishing a comment period and a hearing date for this proceeding.

**DATES:** On February 13, 2009, the EPA hereby convenes a proceeding for reconsideration of the NSR Aggregation Amendments published at 74 FR 2376 (January 15, 2009).

**ADDRESSES:** *Docket:* The final rule, the petition for reconsideration, and all other documents in the record for the rulemaking are in Docket ID No. EPA-HQ-OAR-2003-0064. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Svendsgaard, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-2380; fax number: (919) 541-5509, e-mail address: [svendsgaard.dave@epa.gov](mailto:svendsgaard.dave@epa.gov).

Dated: February 9, 2009.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. E9-3174 Filed 2-12-09; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 3000

[WO-310-1310-PP-24 1A]

RIN 1004-AE01

### Minerals Management: Adjustment of Cost Recovery Fees

*Correction*

In rule document E8-22255 beginning on page 54717 in the issue of Tuesday, September 23, 2008 make the following correction:

#### §3000.12 [Corrected]

On page 54720, in §3000.12(a), in the third column, in the FY 2009 Processing and Filing Fee Table, in the second column, in the 18th entry, "10" should read "105".

[FR Doc. Z8-22255 Filed 2-12-09; 8:45 am]

**BILLING CODE 1505-01-D**