

The Coast Guard reviewed CDOT's proposed maintenance plan and determined that the time period of the deviation is reasonable given the work that is scheduled to be performed on the bridge.

The deviation from the normal operating regulations was authorized under 33 CFR 117.35.

Dated: April 27, 1999.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard Commander,  
First Coast Guard District.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CGD1-98-170]

RIN 2121-AA97

### Safety Zone; Port of New York/New Jersey Fleet Week

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is establishing five safety zones in New York Harbor's Upper Bay and the Hudson River that will be activated annually for the Fleet Week Parade of Ships, for Air and Sea demonstrations, and for the departure of the participating U.S. Navy Aircraft or Helicopter Carrier. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of New York Harbor's Upper Bay and the Hudson River.

**DATES:** This final rule is effective annually from 8 a.m. on the Wednesday before Memorial Day until 4 p.m. on the Wednesday following Memorial Day.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354-4193.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354-4193.

### SUPPLEMENTARY INFORMATION:

### Regulatory History

On February 24, 1999, the Coast Guard published a notice of proposed

rulemaking (NPRM), entitled Safety Zone: Port of New York/New Jersey Fleet Week in the **Federal Register** (64 FR 9107). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date of publication for this regulation's NPRM with 60-day comment period, there was insufficient time to draft and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of New York Harbor's Upper Bay and Hudson River and provide for the safety of life on navigable waters during this annual event. Additionally, the public was notified of this event when the NPRM was published in the Local Notice of Mariners on March 2, 1999.

### Background and Purpose

The Intrepid Sea, Air and Space Museum, Manhattan, NY, sponsors the annual Fleet Week Parade of Ships, as well as associated Sea and Air demonstrations. These events take place annually from the Wednesday before Memorial Day to the Wednesday following Memorial Day on the waters of New York Harbor's Upper Bay and the Hudson River. The Coast Guard expects no more than 500 spectator craft for these events.

### Parade of Ships

The Coast Guard is establishing three safety zones for the actual parade of ships on the Wednesday before Memorial Day. The first zone is a moving safety zone for the Parade of Ships to include all waters 500 yards ahead and astern, and 200 yards on each side of the designated column of parade vessels as the column transits the Port of New York and New Jersey from the Verrazano Narrows Bridge to Riverside State Park on the Hudson River between West 137th and West 144th Streets, Manhattan.

The second zone established for the parade of ships expands from the column of parade vessels east to the Manhattan shoreline between Piers 83 and 90. This expansion gives the public an unobstructed view of the parade of ships from the pierside reviewing stand.

The third zone activates as each vessel leaves the parade of ships and proceeds to its berthing area. The moving safety zone will expand to include all waters within a 200-yard

radius of each vessel until it is safely berthed.

These three safety zones are effective annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day. They are needed to protect the maritime public from possible hazards to navigation associated with a parade of naval vessels transiting the waters of New York Harbor and the Hudson River in close proximity. These vessels have limited maneuverability and require a clear traffic lane to safely navigate.

### Air and Sea Demonstration

The Coast Guard is establishing a safety zone for the Fleet Week Sea and Air demonstrations held on and over the Hudson River between Piers 83 and 90. This safety zone includes all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46'10"N 074°00'13"W (NAD 1983), south to approximate position 40°45'54"N 074°00'25"W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall. This safety zone is effective annually from 10 a.m. until 5 p.m., Friday through Monday, Memorial Day weekend. It is needed to protect boaters and demonstration participants from the hazards associated with military personnel demonstrating the capabilities of aircraft and watercraft in a confined area of the Hudson River. This safety zone prevents vessels from transiting only a portion of the Hudson River. Marine traffic will still be able to transit through the western 600 yards of the 950-yard wide Hudson River during the Sea and Air demonstrations. Vessels moored at piers within the safety zone, however, will not be allowed to transit from their moorings without permission from the captain of the Port, New York, during the effective periods of the safety zone. The Captain of the Port does not anticipate any negative impact on recreational or commercial vessel traffic due to this safety zone.

### U.S. Navy Vessel Departure

Finally, the Coast Guard is establishing a moving safety zone for the departure of the participating U.S. Navy Aircraft or Helicopter Carrier in this annual event. This safety zone includes all waters 500 yards ahead and astern, and 200 yards on each side of the vessel as it transits the Port of New York and New Jersey from its mooring at the Intrepid Sea, Air and Space Museum, Manhattan, to the COLREGS Demarcation line at Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805). The regulation is effective

annually, on the Wednesday following Memorial Day. Departure time is dependent on tide, weather, and granting of authority for departure by the Captain of the Port, New York. The safety zone is needed to protect the maritime public from possible hazards to navigation associated with a large naval vessel transiting the Port of New York and New Jersey with limited maneuverability in restricted waters. It provides a clear traffic lane for the U.S. Navy ship to safely navigate from its berth. The specific ship which this moving safety zone applies to will be published in the Local Notice to Mariners and broadcast by maritime information broadcasts and facsimile prior to the start of Fleet Week events.

#### Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to the proposed rule.

#### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of New York Harbor's Upper Bay and the Hudson River during the event, the effect of this regulation will not be significant for the following reasons: the regulations will be in effect for barely a week a year; the maritime community will receive extensive advance notice through Local Notices to Mariners, facsimile, and marine information broadcasts; Fleet Week is an annual event with local support; at no time will any of the affected waterways be entirely closed to marine traffic; alternative routes are available for commercial and recreational vessels that can safely navigate the Harlem and East Rivers, Kill Van Kull, Arthur Kill, and Buttermilk Channel; and similar safety zones have been established for several past Fleet Week parades and Sea and Air demonstrations with minimal or no disruption to vessel traffic or other interests in the port. These safety zones

have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include 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.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

#### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104-4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, \$100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

#### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further

environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

#### Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

#### List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

#### Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

#### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105-383.

2. Add § 165.163 to read as follows:

#### § 165.163 Safety Zones; Port of New York/ New Jersey Fleet Week.

(a) The following areas are established as safety zones:

(1) Safety Zone A—(i) *Location.* A moving safety zone for the Parade of Ships including all waters 500 yards ahead and astern, and 200 yards of each

side of the designated column of parade vessels as it transits the Port of New York and New Jersey from the Verrazano Narrows Bridge to Riverside State Park on the Hudson River between West 137th and West 144th Streets, Manhattan.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(2) *Safety Zone B—(i) Location.* A safety zone including all waters of the Hudson River between Piers 83 and 90, Manhattan, from the parade column east to the Manhattan shoreline.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(3) *Safety Zone C—*

(i) *Location.* A moving safety zone including all waters of the Hudson River within a 200-yard radius of each parade vessel upon its leaving the parade of ships until it is safely berthed.

(ii) *Enforcement period.* Paragraph (a)(3)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(4) *Safety Zone D—*

(i) *Location.* A safety zone including all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46'10"N 074°00'13"W (NAD 1983), south to approximate position 40°45'54"N 074°00'25"W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall.

(ii) *Enforcement period.* Paragraph (a)(4)(i) of this section is enforced annually from 10 a.m. until 5 p.m., from Friday through Monday, Memorial Day weekend.

(5) *Safety Zone E—*

(i) *Location.* A moving safety zone including all waters 500 yards ahead and astern, and 200 yards on each side of the departing U.S. Navy Aircraft or Helicopter Carrier as it transits the Port of New York and New Jersey from its mooring at the Intrepid Sea, Air and Space Museum, Manhattan, to the COLREGS Demarcation line at Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805).

(ii) *Enforcement period.* Paragraph (a)(5)(i) of this section is enforced annually on the Wednesday following Memorial Day. Departure time is dependent on tide, weather, and granting of authority for departure by the Captain of the Port, New York.

(b) *Effective period.* This section is effective annually from 8 a.m. on the Wednesday before Memorial Day until 4

p.m. on the Wednesday following Memorial Day.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 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. 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: April 29, 1999.

**L.M. Brooks,**

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

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-98-006]

RIN 2121-AA97

#### Security Zone: Dignitary Arrival/Departure New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is establishing permanent security zones around the Wall Street heliport on the East River and the Marine Air Terminal at La Guardia Airport on Bowery Bay to protect the Port of New York/New Jersey, the President, Vice President, and visiting heads of foreign states or foreign governments during their arrival, departure, and transits to and from the Wall Street heliport and the Marine Air Terminal. This action is necessary to protect visiting dignitaries and the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' visit to New York City. This action establishes permanent exclusion areas that are active only from shortly before the dignitaries' arrival into an area until shortly after the dignitaries' departure from that area.

**DATES:** This final rule is effective June 9, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New

York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354-4193.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354-4193.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

On December 22, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM), entitled Security Zone: Dignitary Arrival/Departure New York, NY in the **Federal Register** (63 FR 70707). The Coast Guard received one letter commenting on the proposed rulemaking. No public hearing was requested, and none was held.

#### Background and Purpose

New York City is often visited by the President and Vice President of the United States, as well as visiting heads of foreign states or foreign governments, on the average of 8 times per year. Often these visits are on short notice. The President, Vice President, and visiting heads of foreign states or foreign governments require Secret Service protection. These dignitaries arrive at John F. Kennedy, La Guardia, or Newark, New Jersey International Airports. They then transit to either the Wall Street or West 30th Street heliports or they fly directly into the Marine Air Terminal at La Guardia. Due to the sensitive nature of these visits a security zone is needed. Standard security procedures are enacted to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature. In the past, temporary security zones were requested by the U.S. Secret Service with limited notice for preparation by the U.S. Coast Guard and no opportunity for public comment. Establishing permanent security zones by notice and comment rulemaking gave the public the opportunity to comment on the security zones. This final rule establishes two permanent security zones that could be activated upon request of the U.S. Secret Service pursuant to their authority under 18 U.S.C. § 3056.

The activation of a particular security zone will be announced via facsimile and marine information broadcasts.

#### Discussion of Comments and Changes

The Coast Guard received one letter commenting on the proposed rule. One change is being made to the proposed rule in response to the comment received.