

Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on April 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

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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:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify several aspects of the permanent safety and security zones within the New York Captain of the Port Zone. This action is necessary to consolidate, clarify, and otherwise modify safety and security zone regulations to eliminate unnecessary regulations and better meet the safety and security needs of the New York and New Jersey port community. This action would modify existing safety and security zones, consolidate and modify safety and security zones currently found in separate regulations, and remove certain safety and security zones.

**DATES:** Comments and related material must reach the Docket Management Facility on or before July 7, 2008. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 7, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2007-0074 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground

Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) *Hand delivery:* Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) *Fax:* 202-493-2251.

You must also send comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail at [nlesser@omb.eop.gov](mailto:nlesser@omb.eop.gov) or fax at 202-395-6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Lieutenant Commander Mike McBrady, Waterways Management Division, Coast Guard Sector New York (718) 354-2353. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information that you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

##### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2007-0074), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management

Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, please submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2007-0074) in the Search box, and click "Go >>." You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or 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.

##### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### 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 (72 FR 52465, September 13, 2007); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism (72 FR 54205, September 21, 2007). 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 11th 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.

The Coast Guard (USCG) proposes to make 11 distinct changes to current safety and security zone regulations in 33 CFR part 165 to improve maritime security and reduce unnecessary burdens imposed by current security zones.

*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. This proposed rule would revise and relocate 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, rendering the current regulations found at 33 CFR 165.160 unnecessary. This regulatory change is proposed to 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 \* \* \*" (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 propose to revise 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>. 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 why 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 proposes 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.

*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 over 250 yards from the facility. However, this zone is only enforced when cruise ships are present.

In the interest of protecting this high-interest facility, we propose to revise 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 would be significantly reduced to reflect the current protection needs of the Passenger Ship Terminal.

The proposed revision will reduce the zone size to extend up to 150 yards into the waterway. The northern boundary of the proposed zone would move 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 would be 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 would also allow 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 propose to move these regulations with revisions to the regulations found at 33 CFR 165.169. Revisions are also proposed to provide a detailed

definition of "LHG Vessel," and to ensure the regulation conforms to enforcement practices. The language regarding LHG Facilities will be 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 propose to incorporate 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 proposed rule would define the term "cruise ship" so as to include that class of vessel readily identifiable to the regulated public as such. This proposed rule would also render 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 proposed change would decrease 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 en route 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 propose to revise these regulations and move them to 33 CFR 165.169(a)(15). The proposed regulation would 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 propose to remove the existing language regarding Designated Vessels as being certificated to carry 500 or more passengers as these types of vessels would be covered in the proposed regulation for Cruise Ships. These proposed Designated Vessels would be 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 pennant) from the outermost halyard (above the pilot house) where it can most easily be seen. The Captain of the Port would also notify the maritime community of periods during which this zone would be enforced by methods in accordance with 33 CFR 165.7. Similar to the proposed rule for cruise ships, these safety and security zones would 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 MTSAs 2002, we propose to establish a 25-yard security zone surrounding the 134th Street Pipeline Metering and Regulating Station Pier. This security zone is

currently established under a regulation for commercial waterfront facilities found in 33 CFR 165.169(a)(3). Under a change proposed 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 proposed security zone would establish 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 propose to modify 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 propose to tailor 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 would be 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 would be removed.

**Waterfront Heliports:** Additionally, although not specifically regulated under MTSAs 2002, we propose to establish 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 proposed 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 proposed 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 proposed security zone would 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 Proposed Rule

We have discussed the nature of the proposed rule above in our discussion of the background and purpose section. This section describes the specific revisions that would be made by the proposed regulatory text that appears at the end of this document.

**Disestablishment of 33 CFR 165.160:** The Liquefied Hazardous Gas vessel or LHG facility, and Designated Vessels regulations in 33 CFR 165.160 would be revised and modified and moved into 33 CFR 165.169(a)(13) through (a)(15). The specific changes to be reflected in the new proposed regulations are discussed in the LHG Vessels, Cruise ships, and Designated vessels sections below.

**Commercial Waterfront Facilities:** Under this proposed regulation, we would revise 33 CFR 165.169(a)(3) to allow certain vessels to enter the security zones around Commercial Waterfront Facilities with the authorization of the Facility Security

Officer (FSO). Such authorization from the FSO would allow entry into the security zone without requiring express Captain of the Port approval. Active participation in authorized vessel-to-facility transfer operations, authorized vessel docking or undocking operations, authorized vessel to vessel transfer operations, and other routine waterfront operations specified in the Captain of the Port approved Facility Security Plan would all be permitted without individual vetting and approval of the Captain of the Port. It would be a violation of this safety and security zone regulation for any of these activities to occur within the safety and security zone without FSO authorization. For all other activities that vessels or personnel would require access to the safety and security zone, the Captain of the Port would require confirmation from the FSO that the personnel and vessels intending to occupy the safety and security zone have been screened according to the previously established measures for granting facility access. Such measures for granting facility access must be approved by the Coast Guard as part of the facility's Facility Security Plan (FSP) and be appropriate to the given Maritime Security Level.

*Liberty and Ellis Islands:* Liberty and Ellis Island are currently provided a safety and security zone extending 150 yards around each island in 33 CFR 165.169(a)(4). We propose to revise that regulation and merge the two separate zones into a single zone while expanding the size of the security zone around Liberty Island. The resultant security zone would maintain current boundaries north and east of Ellis Island and increase the security zone size east and south of Liberty Island, to include: waters up to 400 yards east of Liberty Island; the connecting waters between Ellis and Liberty Island; all waters north of the National Dock Channel; and all waters between Liberty and Ellis Islands and Liberty State Park, New Jersey.

The proposed safety and security zone is necessary to protect each Island, the bridge between Liberty State Park and Ellis Island, authorized sightseeing vessels operating at each island, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the islands that could potentially cause serious negative impact to vessels, the port, or the environment. Annual marine events and fireworks displays within approved firework zones will continue to be permitted through the Coast Guard marine event permitting process, however all event participants and equipment will be subject to Captain of the Port and or U. S. Park

Police review for security zone access. New events for which access to this area is necessary will be considered in consultation with the USPP, and an application for a Coast Guard marine event permit may be denied for security reasons as a result of such consultation. Vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity, but outside of the zone.

*NYC Passenger Ship Terminal:* Currently, the Passenger Ship Terminal safety and security zone found at 33 CFR 165.169(a)(6) extends approximately 280 yards into the Hudson River from Pier 96 to Pier 84 and is activated only when a cruise ship is present at berth or when the Intrepid Sea, Air and Space Museum is being utilized as an Emergency Operations Center. To eliminate undue restrictions on commercial and recreational navigation, we propose to reduce the zone to extend to only a maximum of 150 yards into the Hudson River from approximately 50 yards north of Pier 92 south to approximately 50 yards south of Pier 86, including a 25 yard perimeter around the Intrepid Sea, Air, and Space Museum. We further propose removing the activation criteria so that the zone is permanently enforceable. This change is proposed to offer an unchanging zone, which would enhance compliance by the regulated public and eliminate ambiguity for enforcement personnel.

*LHG Vessels:* Safety and security zone regulations for LHG Vessels and Facilities are currently found at 33 CFR 165.160. We propose to relocate these regulations to 33 CFR 165.169(a)(13). Additionally, the current regulation establishes a 200-yard security zone around all LHG Vessels and Facilities. This proposed revision would limit the security zone around moored LHG Vessels to 100-yards due to the constraints on vessel traffic movement around such facilities, and in keeping with current enforcement practice. Language incorporating the LHG facility itself will be removed, as these facilities will be protected when no LHG Vessel is present, by the MTSa Facility safety and security zone discussed earlier in this preamble.

The enforcement period for the proposed revised regulation would be at all times while the LHG 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), and notice will continue to be made in accordance with 33 CFR 165.7. These tank vessels are readily identifiable to the public by the requirement that they fly the Bravo flag (red international

signal pennant) from an outermost halyard above the pilothouse where it can most easily be seen.

*Cruise Ships:* There is currently no specific regulation in the New York Captain of the Port Zone for safety and security around cruise ships. Current safety and security zone regulations for Designated Vessels in 33 CFR 165.160 include vessels certificated to carry 500 or more passengers. We propose to create specific regulations for cruise ships, to fall under 33 CFR 165.169.

We propose to define a "cruise ship" as a passenger vessel (as defined in 46 U.S.C. 2101(22)) that is authorized to carry more than 400 passengers for hire and is 200 feet or more in length. This definition of "cruise ship" will include ferries (as defined in 46 CFR 2.10–25) that are authorized to carry more than 400 passengers for hire and are 200 feet or more in length. Similar to the LHG Vessel zone, this proposed zone would be activated and subject to enforcement at all times a cruise ship is underway, anchored or moored within the navigable waters of the United States in the New York Captain of the Port Zone.

*Designated Vessels:* Safety and security zone regulations for Designated Vessels are currently found in 33 CFR 165.160. We propose to revise and relocate these regulations to 33 CFR 165.169(a)(15). The current regulation limits the application of Designated Vessel status to vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo. The proposed changes to this regulation would remove the language regarding vessels certificated to carry 500 or more passengers as this would be covered elsewhere in the regulations for Cruise Ships, and add passenger vessels authorized to carry more than 400 passengers and are less than 200 feet in length. In addition, the proposed change would clarify that ships and barges carrying petroleum products, chemicals or other hazardous cargo would be identifiable to the public by the requirement that the vessel fly the Bravo flag (red international signal pennant) from an outermost halyard above the pilot house where it can most easily be seen. Vessels carrying government officials, dignitaries requiring protection, or 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, will be recognizable to the public as the vessel will be escorted by

a federal, state or local law enforcement vessel identifiable by flashing light, siren, special markings or other means that identify the vessel as engaged in law enforcement or security operations.

**134th Street Pipeline Metering and Regulating Station:** Although not specifically regulated under MTSA 2002, we propose to retain the 25-yard security zone surrounding the 134th Street Pipeline Metering and Regulating Station Pier. This security zone is currently covered under regulation pertaining to commercial waterfront facilities found in 33 CFR 165.169(a)(3). Under a change proposed to that regulation discussed earlier in this preamble, that coverage would be terminated because 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 an attack on 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 proposed security zone would establish 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:** Modifications to the security zone found at 33 CFR 165.130(a) are necessary to align that zone's dimensions with those of the Restricted Area Regulations found in 33 CFR 334.102. This alignment would provide unambiguous concurrent enforcement capability for both Coast Guard and Department of Defense (DoD) patrol craft assigned waterside security responsibilities in this area. Specifically the boundaries of the security zone would be altered to include all navigable waters of Sandy Hook Bay within 750 yards of all Naval Weapons Station Earle piers and within Terminal Channel leading to the pier at Naval Weapons Station Earle, New Jersey.

**Additional Consistency Modifications Within 33 CFR 165.169:** We propose to make certain changes to increase the clarity of 33 CFR 165.169. Paragraph (b)(3) of that section applies solely to the safety and security zone codified in 33 CFR 165.169(a)(3). Paragraph (b)(3) would be removed in light of the proposed revisions to paragraph (a)(3). Paragraphs (b)(4) and (b)(5) of 33 CFR

165.169, both of which apply solely to the safety and security zone codified at 33 CFR 165.169(a)(12), would become part of paragraph (a)(12). Paragraph 165.169(c) would similarly be moved to become part of 33 CFR 165.169(a)(12).

**Waterfront Heliports:** Finally, although not specifically regulated under MTSA 2002, we propose to retain the 25-yard security zones surrounding the four waterfront heliports currently operating at Manhattan Island and Jersey City, New Jersey. These security zones are currently covered under regulation pertaining to commercial waterfront facilities found in 33 CFR 165.169(a)(3). Security zones at these facilities, which are primarily regulated by the Transportation Security Administration, are necessary to ensure the continued safety and security of both general aviation as well as recently-approved and currently-considered commuter flight services. Consultation with the Transportation Security Administration and the Port Authority of New York and New Jersey indicated that retention of the current 25-yard security zones is warranted.

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 proposed security zone would establish unambiguous Federal regulation to allow the Captain of the Port to assist facility security personnel in preventing unauthorized waterside access to these facilities.

#### Regulatory Evaluation

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

##### *Executive Order 12866*

This proposed 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 proposed 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 proposed regulation may be granted through coordination with the Captain of the Port. With regard to the changes to the Commercial Waterfront Facilities, this

proposed rule would reduce the number of safety and security zones around commercial waterfront facilities, thereby reducing the level of regulatory impact. With regard to the expansion of the zone at Liberty and Ellis Islands, this proposed rule would not infringe on any Federal channel and procedures would be enacted to provide regulated public access to those areas. With regard to the changes proposed for the New York City Passenger Ship Terminal safety and security zone, the proposed rule would reduce the size of the regulated area. With regard to the changes proposed for the inclusion of LHG Vessels, the proposed regulation would substitute less restrictive regulations for those currently in effect. With regard to the addition of regulations relating to cruise ships, the proposed rule would in effect move the current regulation regarding cruise ships currently contained in 33 CFR part 169.160 to the new section with modifications to the definition. In effect, the rule does not create a new type of security zone, rather, it moves an existing regulation to another section of the code, thereby creating no significant change to the security zone requirements. With regard to the changes proposed for the inclusion of the 134th Street Pipeline Metering and Regulating Station pier, vessels will be able to transit around the zone. With regard to the changes proposed for the modification to the Security Zone at Naval Weapons Station Earle, Sandy Hook Bay, New Jersey, this regulation proposes only to align 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 proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would 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 Evaluation section above.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander M. McBrady, Waterways Management Division, Coast Guard Sector New York (718) 354–2353. 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 proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

**Title:** Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

**Summary of the Collection of Information:** This information collection provides the basis for the Captain of the Port to assess the security risks posed by allowing a vessel to enter the security zones established for the Part 105 Facilities, New York City Passenger Ship Terminal, the 134th Street Pipeline

Metering and Regulation Station and the Waterfront Heliports. This risk assessment guides the COTP in deciding whether or not to authorize entry to the requesting person or vessel.

**Need for Information:** In accordance with 33 U.S.C. 1226, the U.S. Coast Guard may establish security and safety zones and control access to such zones. The information collection allows the Captain of the Port to assess security risks of allowing persons or vessels to access an established zone.

**Proposed Use of Information:** The information collection will be used to monitor what vessels and numbers of individuals are within an established security zone.

**Description of the Respondents:** Respondents will be vessel owners or operators, and contractors.

**Number of Respondents:** Eighty.

**Frequency of Response:** Two times per week.

**Burden of Response:** Approximately 5 minutes per response. Vessel owners or operators and contractors report that they are entering the security zone to Coast Guard Sector New York by VHF Marine Radio or telephone at the beginning of their project. The information collected includes name of caller and contact information, name and description of vessel, location of the security zone, number of persons entering the security zone, reason for entering the security zone, and the expected amount of time within the security zone. There is no instruction review necessary for this report. Gathering and maintaining data would be conducted by the reporting source on the way to the security zone. It is expected that gathering this information would require minimal effort and no extra financial resources.

**Estimate of Total Annual Burden:** Nine hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket

Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

#### *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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *Taking of Private Property*

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

### Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed 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 made a preliminary determination

that this action is not likely to have a significant effect on the human environment. A preliminary “Environmental Analysis Check List” supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery or a significant environmental impact from this proposed rule.

### 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 proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 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′28.3″ N, 074°02′12.4″ W; thence to 40°26′29.2″ N, 074°02′53″ W; thence to 40°26′31.1″ N, 074°02′57.2″ W; thence to 40°25′27.3″ N, 074°03′41″ W; thence northwest along the shoreline to the beginning point.

\* \* \* \* \*

#### § 165.160 [Removed]

3. Remove § 165.160.

4. Amend § 165.169 as follows: revise paragraphs (a)(3), (a)(4), (a)(6), and (a)(12); add paragraphs (a)(13) through (a)(17); and remove paragraphs (b)(3) through (b)(5), and (c), to read as follows:

#### § 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. Before authorization to enter the zone, the Coast Guard will evaluate available information, which may vary depending on on-scene and operational conditions. Vessels requesting permission to enter the zone should be prepared to communicate with the Coast Guard while this evaluation process occurs. Information the Coast Guard will evaluate in making its determination may include the manifest of all equipment and personnel to be granted access to the area, dates and times of access, the purpose for which access is requested, and on-scene contact information for personnel or equipment that will occupy the zone.

(4) *Liberty and Ellis Islands.* All waters of Upper New York Bay bound by the following points: 40°41′25.9″ N, 074°03′17.8″ W; thence along the northern edge of National Dock Channel passing through National Dock Channel Buoy 6 in approximate position 40°41′20.2″ N, 074°02′58.2″ W; thence to

National Dock Channel Buoy 4 in approximate position 40°41'15.6" N, 074°02'50.3" W; thence to National Dock Channel Buoy 2 in approximate position 40°41'09.4" N, 074°02'39.9" W; thence to 40°41'11.3" N, 074°02'25.2" W; thence to 40°41'26.9" N, 074°02'21.2" W; thence to 40°41'39.2" N, 074°02'33.2" W; thence to 40°41'49.6" N, 074°02'18.4" W; thence to 40°41'50.6" N, 074°02'13.8" W; thence to 40°41'54.3" N, 074°02'11.7" W; thence to 40°41'57.2" N, 074°02'07.6" W; thence to 40°42'09.5" N, 074°02'23.8" W; thence to 40°42'06.7" N, 074°02'28.0" W; thence to 40°42'11.6" N, 074°02'37.6" W; (NAD 83) thence southwest along the shoreline to the point of origin.

\* \* \* \* \*

(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. Before authorization to enter the zone, the Coast Guard will

evaluate available information, which may vary depending on on-scene and operational conditions. Vessels requesting permission to enter the zone should be prepared to communicate with the Coast Guard while this evaluation process occurs. Information the Coast Guard will evaluate in making its determination may include the manifest of all equipment and personnel to be granted access to the area, dates and times of access, the purpose for which access is requested, and on-scene contact information for personnel or equipment that will occupy the zone.

\* \* \* \* \*

(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 pennant) 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 pennant) from the outermost halyard (above the pilot house) where it can most easily be seen. 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. Before authorization to enter the zone, the Coast Guard will evaluate available information, which may vary depending on on-scene and operational conditions. Vessels requesting permission to enter the zone should be prepared to communicate with the Coast Guard while this evaluation process occurs. Information the Coast Guard will evaluate in making its determination may include the manifest of all equipment and personnel to be granted access to the area, dates and times of access, the purpose for

which access is requested, and on-scene contact information for personnel or equipment that will occupy the zone.

(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. Before authorization to enter the zone, the Coast Guard will evaluate available information, which may vary depending on on-scene and operational conditions. Vessels requesting permission to enter the zone should be prepared to communicate with the Coast Guard while this evaluation process occurs. Information the Coast Guard will evaluate in making its determination may include the manifest of all equipment and personnel to be granted access to the area, dates and times of access, the purpose for which access is requested, and on-scene contact information for personnel or equipment that will occupy the zone.

(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: April 25, 2008.

**Michael S. Gardiner,**

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

[FR Doc. E8-10000 Filed 5-5-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0326]

RIN 1625-AA00

#### **Safety Zone; Rochester Harborfest, Lake Ontario at the Genesee River, Rochester, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishment of a safety zone for a fireworks event in the Captain of the Port Buffalo zone. This proposed rule is intended to restrict vessels from portions of water and shore areas during events that pose a hazard to public safety. The safety zone established by this proposed rule is necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays.

**DATES:** Comments and related materials must reach the Coast Guard on or before June 5, 2008.

**ADDRESSES:** You may mail comments and related material to Commander, U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Boulevard, Buffalo, NY 14203. Sector Buffalo Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Buffalo between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have further questions on this rule, contact Lieutenant Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843-9573.

**SUPPLEMENTARY INFORMATION:**