

*August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States*, 67 FR 56215 (September 3, 2002).

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

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

#### Discussion of Temporary Rule

This rule establishes the following temporary security zones:

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

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

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

The Coast Guard is establishing temporary security zones in all waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92 bound by the following points: from the northeast corner of Pier 81 where it intersects the seawall, thence to approximate position 40°45'51.3" N, 074°00'30.2" W, thence to 40°46'27.7" N, 074°00'04.9" W, thence to the southeast

corner of Pier 97 where it intersects the seawall.

The zones described above are necessary to protect the Naval and Coast Guard vessels participating in Fleet Week 2003, the Stapleton Homeport Pier, the New York City Passenger Ship Terminal; the Intrepid Museum, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the vessels and piers that could potentially cause serious negative impact to vessels, the port, or the environment and result in numerous casualties. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Vessels will still be able to transit around the security zones at all times. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Any violation of any security zone herein is punishable by, among others, civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$100,000), in rem liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

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

#### Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. This finding is based on the fact that: the

zones are temporary in nature; the zones implicate relatively small portions of the waterway; and vessels will be able to transit around the security zones at all times.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Upper New York Bay and the Hudson River in which entry will be prohibited by these security zones.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the zones are temporary in nature; the zones implicate relatively small portions of the waterways; and vessels will be able to transit around the security zones at all times.

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 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

#### Collection of Information

This temporary rule would call for no new collection of information under the