

or § 10.51 (relating to false opinions). Particularly, whether Circular No. 230 should establish standards for opinions intended to provide legal justification for the treatment of an item for purposes of § 1.6664-4(e) of the Regulations on Procedure and Administration (relating to the reasonable cause exception).

3. Whether an opinion provided for legal justification for purposes of § 1.6664-4(e) of the regulations should specifically state that it is provided for this purpose.

4. For purposes of the foregoing:

a. Whether the factual due diligence standards set forth in § 10.33(a)(1) should be applied to tax shelter opinions other than those provided for the marketing of tax shelters.

b. Whether the factual due diligence standards should be modified to further limit the circumstances under which a practitioner may rely on factual assertions of other persons and to require a practitioner to specify the measures taken to confirm the facts.

c. Under what circumstances, if any, Circular No. 230 should permit a practitioner to base an opinion upon hypothetical facts or factual assumptions and conclusions, including assumptions regarding the existence of a business purpose and the significance of such purpose relative to the intended tax benefits.

d. Whether Circular No. 230 should require that the opinion state that the transaction in question was analyzed under all applicable judicial doctrines (including the step transaction, business purpose, economic substance, substance over form, and sham transaction doctrines).

e. Whether Circular No. 230 should require that an opinion state unambiguously that there is a greater than 50 percent likelihood that the taxpayer will prevail with respect to each material tax issue and with respect to the material tax benefits in the aggregate.

#### B. Contingent Fees

1. Whether § 10.28 should prohibit a practitioner from charging a fee for an opinion or advice relating to a position taken or to be taken by a taxpayer in an original return where such fee is contingent upon whether the tax treatment of the transaction is sustained, and whether § 10.28 should prohibit a practitioner from providing an indemnity to a taxpayer with respect to a position taken or to be taken in an original return.

2. Whether § 10.28 should continue to permit a practitioner to charge a contingent fee for assisting a client in filing an amended return or claim for

refund when the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended return or claim will receive substantive review from the Service.

#### C. Conditions of Confidentiality

1. Whether there are circumstances in which Circular No. 230 should prohibit a practitioner from agreeing to conditions of confidentiality other than conditions of confidentiality imposed by reasons of privilege. If so, how should confidentiality be defined?

2. Whether Circular No. 230 should prohibit a practitioner from asking a client to agree to conditions of confidentiality.

#### D. Sanctions

1. Whether § 10.24 should be modified to clarify what types of relationships with suspended persons are prohibited.

2. Whether there are circumstances in which a practitioner's failure to comply with the rules under Circular No. 230 should be attributed to the firm with which the practitioner is associated so that the practitioner and the firm (or all practitioners in the firm) may be subject to discipline under Circular No. 230.

3. Whether Circular No. 230 can or should provide a broader array of sanctions, such as censure, for violation of its provisions.

4. Whether the identities of those who are disciplined under Circular No. 230 should be exposed to greater publicity. If so, how should greater publicity be achieved?

#### E. General Issues

1. Whether § 10.7(c)(1) should be modified to permit, under limited circumstances, an individual who is not authorized to practice before the IRS to represent a taxpayer without obtaining authorization for a special appearance from the Director of Practice under § 10.7(d).

2. Whether and to what extent § 10.21 should be modified regarding the actions a practitioner must take when he or she discovers that there is an error or omission on a return or other document.

3. Whether § 10.22 should be modified to define what constitutes due diligence.

4. Whether § 10.29 should be expanded to define conflicting interests and to delineate what constitutes informed consent permitting a practitioner to represent clients with conflicting interests.

5. How the provisions of § 10.30(a)(2), regarding uninvited solicitations, should be modified in light of *Edenfield v. Fane*, 507 U.S. 761 (1993).

6. Whether the definition of communication in § 10.30(c) should be expanded specifically to include certain forms of electronic communications and whether there are any special considerations that should be addressed regarding these forms of communication for purposes of § 10.30.

7. Whether the § 10.51 definition of disreputable conduct should be expanded to include conviction of any felony.

In addition to the foregoing issues, the Treasury Department and the IRS invite comments on any other changes that are necessary or appropriate to carry out the purposes of Circular No. 230.

Dated: May 5, 2000.

Neal Wolin,

General Counsel.

[FR Doc. 00-11702 Filed 5-5-00; 3:35 pm]

BILLING CODE 4830-01-P

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-00-004]

RIN 2115-AA97

#### Safety Zone: New York Harbor, Western Long Island Sound, East and Hudson Rivers Fireworks.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish 20 permanent safety zones for fireworks displays located on New York Harbor, western Long Island Sound, the East River, and the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the events. This action establishes permanent exclusion areas that are only active prior to the start of the fireworks display until shortly after the fireworks display is completed, and is intended to restrict vessel traffic in a portion of New York Harbor, western Long Island Sound, the East and Hudson Rivers.

**DATES:** Comments and related material must reach the Coast Guard on or before June 12, 2000.

**ADDRESSES:** You may mail comments and related material to Waterways Oversight Branch (CGD01-00-004), Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York 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 room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-00-004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this proposed regulation is 30 days. This time period is adequate to allow local input because the locations have been used for fireworks displays in previous years. The shortened comment period will still allow the full 30-day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, 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.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch 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**

The Coast Guard proposes to establish 20 permanent safety zones that will be activated for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these 20 locations. The 20 locations are Coney Island in New York Harbor; Elizabeth, New Jersey on the Arthur Kill; Peningo Neck, Satans Toe, Larchmont, Manursing Island, Glen Island, Twin Island, Davenport Neck, and two

locations in Hempstead Harbor in western Long Island Sound; Pier 14, Manhattan, Hunters Point, and Wards Island in the East River; The Battery, Battery Park City, and Pier 90, Manhattan; Yonkers, Hastings-on-Hudson, and Pier D, Jersey City in the Hudson River. The Coast Guard received 33 applications for fireworks displays in these areas from 1998 to 1999. In 1997, the Coast Guard received 10 applications for fireworks displays in these locations. In the past, temporary safety zones were established with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing permanent safety zones by notice and comment rulemaking at least gives the public the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active. The Coast Guard has received no prior notice of any impact caused by the previous events. Marine traffic would still be able to transit around the proposed safety zones. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed safety zones.

This proposed rule revises 33 CFR 165.168, which was published in the **Federal Register** on January 7, 2000 (65 FR 1065). It adds twenty permanent safety zones to the five existing ones in 33 CFR 165.168, and it lists all twenty five by the body of water in which they are located.

**Discussion of Proposed Rule**

The proposed sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 6-12 inch mortars fired from a barge or shore, combined with the Coast Guard's knowledge of tide and current conditions in these areas. Proposed barge and land site locations, and mortar sizes were adjusted to try and ensure the proposed safety zone locations would not interfere with any known marinas or piers. The 20 proposed safety zones are:

*New York Harbor*

The proposed safety zone in Lower New York Bay includes all waters of Lower New York Bay within a 250-yard radius of the fireworks land shoot located on the south end of Steeplechase Pier, Coney Island, in approximate position 40°34'11" N 073°59'00" W (NAD 1983). The proposed safety zone prevents vessels from transiting a portion of Lower New York Bay, and is needed to protect

boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through Lower New York Bay during the event. Additionally, Steeplechase Pier does not accept marine traffic and there are no commercial or recreational piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone on the Arthur Kill includes all waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot located in Elizabeth, New Jersey, in approximate position 40°38'50" N 074°10'58" W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780). The proposed safety zone prevents vessels from transiting a portion of the Arthur Kill, and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through the southern 90 yards of the Arthur Kill opposite the display site in Elizabeth, New Jersey during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

*Western Long Island Sound*

The proposed safety zone at Peningo Neck includes all waters of western Long Island Sound within a 300-yard radius of the fireworks barge in approximate position 40°56'21" N 073°41'23" W (NAD 1983), about 525 yards east of Milton Point, Peningo Neck. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone east of Satans Toe includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°55'21" N 073°43'41" W (NAD 1983), about 635 yards northeast of Larchmont Harbor (East Entrance) Light 2 (LLNR 25720).

The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone off Larchmont, west of the entrance to Horseshoe Harbor includes all waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°54'45" N 073°44'55" W (NAD 1983), about 450 yards southwest of the entrance to Horseshoe Harbor. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone south of Manursing Island includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°57'47" N 073°40'06" W (NAD 1983), about 380 yards north of Rye Beach Transport Rock Buoy 2 (LLNR 25570). The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone east of Glen Island includes all waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°53'12" N 073°46'33" W (NAD 1983), about 350 yards east of the northeast corner of Glen Island. The proposed safety zone

prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone around the southeast corner of Twin Island includes all waters of western Long Island Sound within a 200-yard radius of the fireworks land shoot in approximate position 40°52'10" N 073°47'07" W (NAD 1983), at the east end of Orchard Beach. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone off Davenport Neck includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in Federal Anchorage No. 1-A, in approximate position 40°53'46" N 073°46'04" W (NAD 1983), about 360 yards northwest of Emerald Rock Buoy (LLNR 25810). The proposed safety zone prevents vessels from transiting a portion of Federal Anchorage No. 1-A and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage No. 1-A. Federal Anchorage No. 1-B, to the north, and Federal Anchorage No. 1, to the south, are also available for vessel use. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone in northern Hempstead Harbor, Long Island Sound, includes all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51'58" N 073°39'34" W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The proposed safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Hempstead Harbor during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone in southern Hempstead Harbor, Long Island Sound, includes all waters of Hempstead Harbor within a 180-yard radius of the fireworks barge in approximate position 40°49'50" N 073°39'12" W (NAD 1983), about 190 yards north of Bar Beach. The proposed safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Hempstead Harbor during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

#### *East River*

The proposed safety zone southeast of Pier 14, Manhattan, includes all waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42'07.5" N 074°00'06" W (NAD 1983), about 250 yards southeast of Pier 14, Manhattan. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will be able to transit through the eastern 100 yards and the western 70 yards of the 530-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone west of Hunters Point includes all waters of the East River within a 300-yard radius of the fireworks barge in approximate position 40°44'24" N 073°58'00" W (NAD 1983), about 780 yards south of Belmont Island. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 225 yards and the eastern 85 yards of the 900-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone at Wards Island includes all waters of the East River within a 150-yard radius of the fireworks land shoot in approximate position 40°46'55.5" N 073°55'33" W (NAD 1983), about 200 yards northeast of the Triboro Bridge. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through the eastern 150 yards of the 300-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

#### *Hudson River*

The proposed safety zone south of The Battery, Manhattan, includes all waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42'00" N 074°01'17" W (NAD 1983), about 500 yards south of The Battery. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and Anchorage Channel and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 675 yards of the 1500-yard wide Hudson River and through the eastern 350 yards of the 1200-yard wide Anchorage Channel during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone.

The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone southwest of North Cove Yacht Harbor, Manhattan, includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42'39" N 074°01'21" W (NAD 1983), about 480 yards southwest of North Cove Yacht Harbor. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 470 yards of the 1215-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone west of Pier 90, Manhattan, includes all waters of the Hudson River within a 300-yard radius of the fireworks barge in approximate position 40°46'12" N 074°00'18" W (NAD 1983), about 425 yards west of the west end of Pier 90, Manhattan. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 175 yards and the eastern 140 yards of the 915-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone west of Yonkers includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56'14.5" N 073°54'33" W (NAD 1983), about 475 yards northwest of Yonkers Municipal Pier. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 715 yards and eastern 115 yards of the 1550-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity

of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone west of Hastings-on-Hudson includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59'44.5" N 073°53'28" W (NAD 1983), about 425 yards west of Hastings-on-Hudson, NY. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 675 yards and eastern 60 yards of the 1315 yard-wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone southeast of Pier D, Jersey City, includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42'57.5" N 074°01'34" W (NAD 1983), about 375 yards southeast of Pier D, Jersey City. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 440 yards of the 1120-yard wide Hudson River during the event. Additionally, Pier D does not accept marine traffic and vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The actual dates that these safety zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information broadcasts will also be made for these events beginning 24 to 48 hours before the event is scheduled to begin. Facsimile broadcasts may also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent safety zone in this rulemaking will normally be made

between thirty and fourteen days before the zone is actually activated. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled "FIREWORKS BARGE". This will provide on-scene notice that the safety zone the fireworks barge is located in is or will be activated on that day. This sign will consist of 10" high by 1.5" wide red lettering on a white background. Displays launched from shore sites will have a sign labeled "FIREWORKS SITE" with the same size requirements. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce each safety zone.

The effective period for each proposed safety zone is from 8 p.m. e.s.t. to 1 a.m. e.s.t. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

This rule is being proposed to provide for the safety of life on navigable waters during the events and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active.

### Regulatory Evaluation

This proposed 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. 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. Vessels may also still transit through Lower New York Bay, the Arthur Kill, western Long Island Sound, the East and Hudson Rivers, and Anchorage

Channel during these events. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Advance notifications would also be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts. Facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that there will only be 20–25 total activations of these safety zones per year.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 a portion of the Port of New York/New Jersey and western Long Island Sound during the times these zones are activated.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic could transit around all 20 safety zones. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Before the effective period, we would issue maritime advisories widely available to users of the Port of New York/New Jersey by local notice to mariners and marine information broadcasts. Facsimile broadcasts may also be made.

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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

### Collection of Information

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

### Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

## Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes 20 safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Revise § 165.168 to read as follows:

### § 165.168 Safety Zones: New York Harbor, Western Long Island Sound, East and Hudson Rivers Fireworks.

(a) *New York Harbor*. Figure 1 displays the safety zone areas in (a)(1) through (a)(6).

(1) *Liberty Island Safety Zone*: All waters of Upper New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°41'16.5"N 074°02'23"W (NAD 1983), located in Federal Anchorage 20-C, about 360 yards east of Liberty Island.

(2) *Ellis Island Safety Zone*: All waters of Upper New York Bay within a 360-yard radius of the fireworks barge located between Federal Anchorages 20-A and 20-B, in approximate position 40°41'45"N 074°02'09"W (NAD 1983), about 365 yards east of Ellis Island.

(3) *South Beach, Staten Island Safety Zone*: All waters of Lower New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°35'11"N 074°03'42"W (NAD 1983), about 350 yards east of South Beach, Staten Island.

(4) *Raritan Bay Safety Zone*: All waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30'04"N 074°15'35"W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595).

(5) *Coney Island Safety Zone*: All waters of Lower New York Bay within a 250-yard radius of the fireworks land shoot located on the south end of Steeplechase Pier, Coney Island, in approximate position 40°34'11"N 073°59'00"W (NAD 1983).

(6) *Arthur Kill, Elizabeth, New Jersey Safety Zone*: All waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot located in Elizabeth, New Jersey, in approximate position 40°38'50"N 074°10'58"W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780).

(b) *Western Long Island Sound*. Figure 2 displays the safety zone areas in (b)(1) through (b)(9).

(1) *Penning Neck, Western Long Island Sound Safety Zone*: All waters of western Long Island Sound within a 300-yard radius of the fireworks barge in approximate position 40°56'21"N 073°41'23"W (NAD 1983), about 525 yards east of Milton Point, Penning Neck, New York.

(2) *Satans Toe, Western Long Island Sound Safety Zone*: All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°55'21"N 073°43'41"W (NAD 1983), about 635 yards northeast of Larchmont Harbor (East Entrance) Light 2 (LLNR 25720).

(3) *Larchmont, Western Long Island Sound Safety Zone*: All waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°54'45"N 073°44'55"W (NAD 1983), about 450 yards southwest of the entrance to Horseshoe Harbor.

(4) *Manursing Island, Western Long Island Sound Safety Zone*: All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°57'47"N 073°40'06"W (NAD 1983), about 380 yards north of Rye Beach Transport Rock Buoy 2 (LLNR 25570).

(5) *Glen Island, Western Long Island Sound Safety Zone*: All waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°53'12"N 073°46'33"W (NAD 1983), about 350 yards east of the northeast corner of Glen Island, New York.

(6) *Twin Island, Western Long Island Sound Safety Zone*: All waters of western Long Island Sound within a 200-yard radius of the fireworks land shoot in approximate position 40°52'10"N 073°47'07"W (NAD 1983), at the east end of Orchard Beach, New York.

(7) *Davenport Neck, Western Long Island Sound Safety Zone*: All waters of western Long Island Sound within a

360-yard radius of the fireworks barge in Federal Anchorage No. 1-A, in approximate position 40°53'46"N 073°46'04"W (NAD 1983), about 360 yards northwest of Emerald Rock Buoy (LLNR 25810).

(8) *Glen Cove, Hempstead Harbor Safety Zone*: All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51'58"N 073°39'34"W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065).

(9) *Bar Beach, Hempstead Harbor Safety Zone*: All waters of Hempstead Harbor within a 180-yard radius of the fireworks barge in approximate position 40°49'50"N 073°39'12"W (NAD 1983), about 190 yards north of Bar Beach, Hempstead Harbor, New York.

(c) *East River*. Figure 3 displays the safety zone areas in (c)(1) through (c)(3).

(1) *Pier 14, East River Safety Zone*: All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42'07.5"N 074°00'06"W (NAD 1983), about 250 yards southeast of Pier 14, Manhattan, New York.

(2) *Hunters Point, East River Safety Zone*: All waters of the East River within a 300-yard radius of the fireworks barge in approximate position 40°44'24" N 073°58'00"W (NAD 1983), about 780 yards south of Belmont Island.

(3) *Wards Island, East River Safety Zone*: All waters of the East River within a 150-yard radius of the fireworks land shoot in approximate position 40°46'55.5"N 073°55'33"W (NAD 1983), about 200 yards northeast of the Triboro Bridge.

(d) *Hudson River*. Figure 4 displays the safety zone areas in (d)(1) through (d)(7).

(1) *Pier 60, Hudson River Safety Zone*: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44'49"N 074°01'02"W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York.

(2) *The Battery, Hudson River Safety Zone*: All waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42'00"N 074°01'17"W (NAD 1983), about 500 yards south of The Battery, Manhattan, New York.

(3) *Battery Park City, Hudson River Safety Zone*: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42'39"N 074°01'21"W (NAD 1983), about 480 yards southwest of North Cove Yacht Harbor, Manhattan, New York.

(4) *Pier 90, Hudson River Safety Zone:* All waters of the Hudson River within a 300-yard radius of the fireworks barge in approximate position 40°46'12"N 074°00'18"W (NAD 1983), about 425 yards west of the west end of Pier 90, Manhattan, New York.

(5) *Yonkers, New York, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56'14.5"N 073°54'33"W (NAD 1983), about 475 yards northwest of the Yonkers Municipal Pier, New York.

(6) *Hastings-on-Hudson, New York, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59'44.5"N 073°53'28"W (NAD 1983), about 425 yards west of Hastings-on-Hudson, New York.

(7) *Pier D, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge

in approximate position 40°42'57.5"N 074°01'34"W (NAD 1983), about 375 yards southeast of Pier D, Jersey City, New Jersey.

(e) *Notification.* Coast Guard Activities New York will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS BARGE". This sign will consist of 10" high by 1.5" wide red lettering on a white background. Fireworks launched from shore sites will display a sign labeled "FIREWORKS SITE" with the same dimensions.

(f) *Effective Period.* This section is effective from 8 p.m. e.s.t. to 1 a.m. e.s.t. each day a barge with a "FIREWORKS

BARGE" sign on the port and starboard side is on-scene or a "FIREWORKS SITE" sign is posted in a location listed in paragraphs (a) through (d) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York or designated Coast Guard patrol personnel on scene.

(g) *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.

**BILLING CODE 4910-15-U**

Illustrations to § 165.168

Figure 1  
§ 165.168(a) New York  
Harbor Fireworks Safety  
Zones drawn to scale.

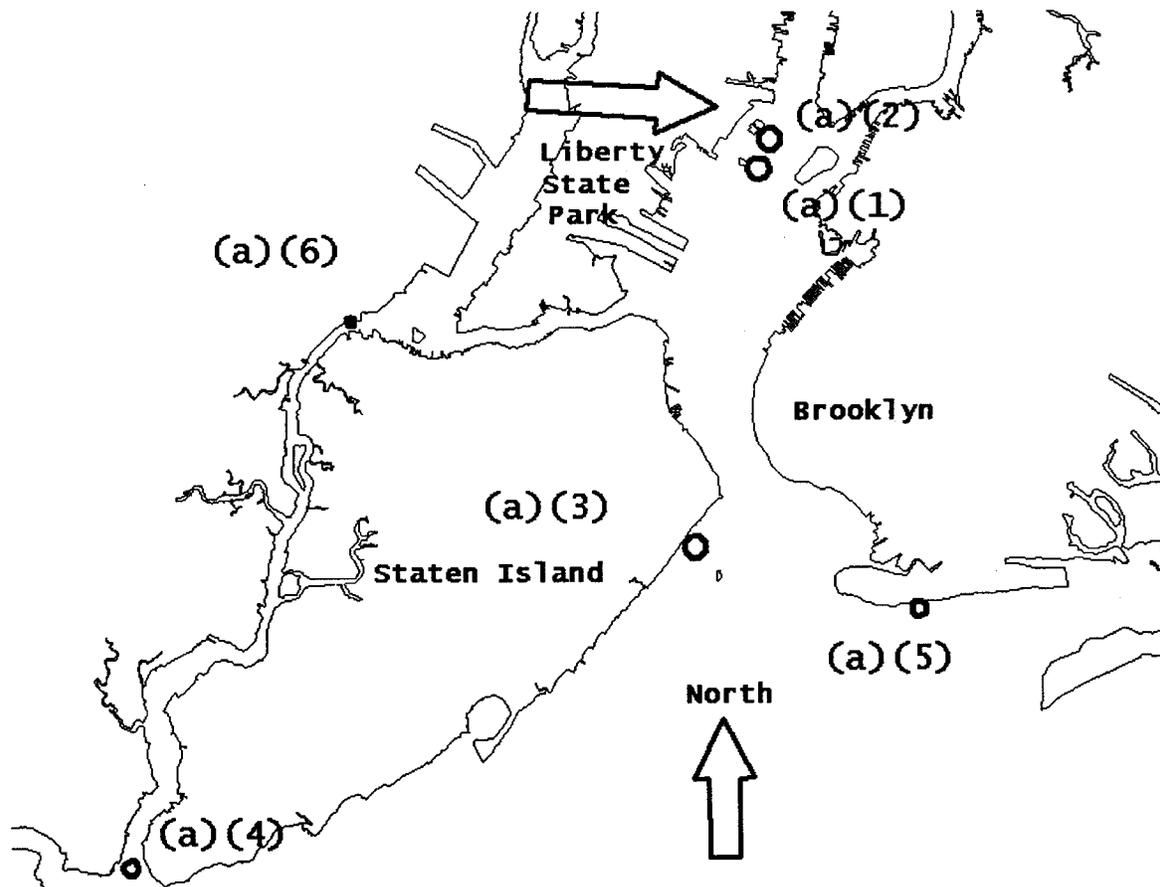


Figure 2  
§ 165.168(b) Western Long  
Island Sound Fireworks  
Safety Zones drawn to scale.

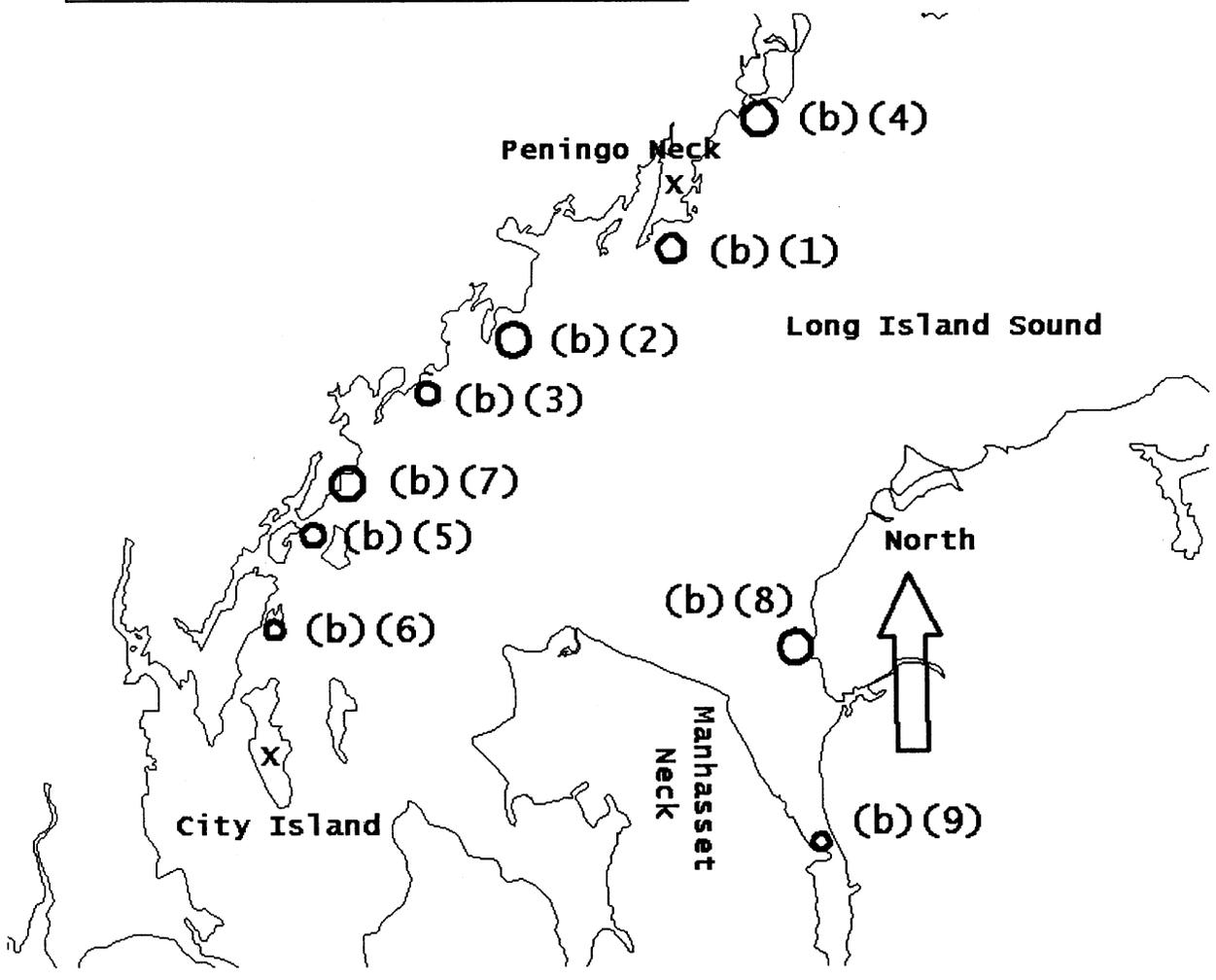
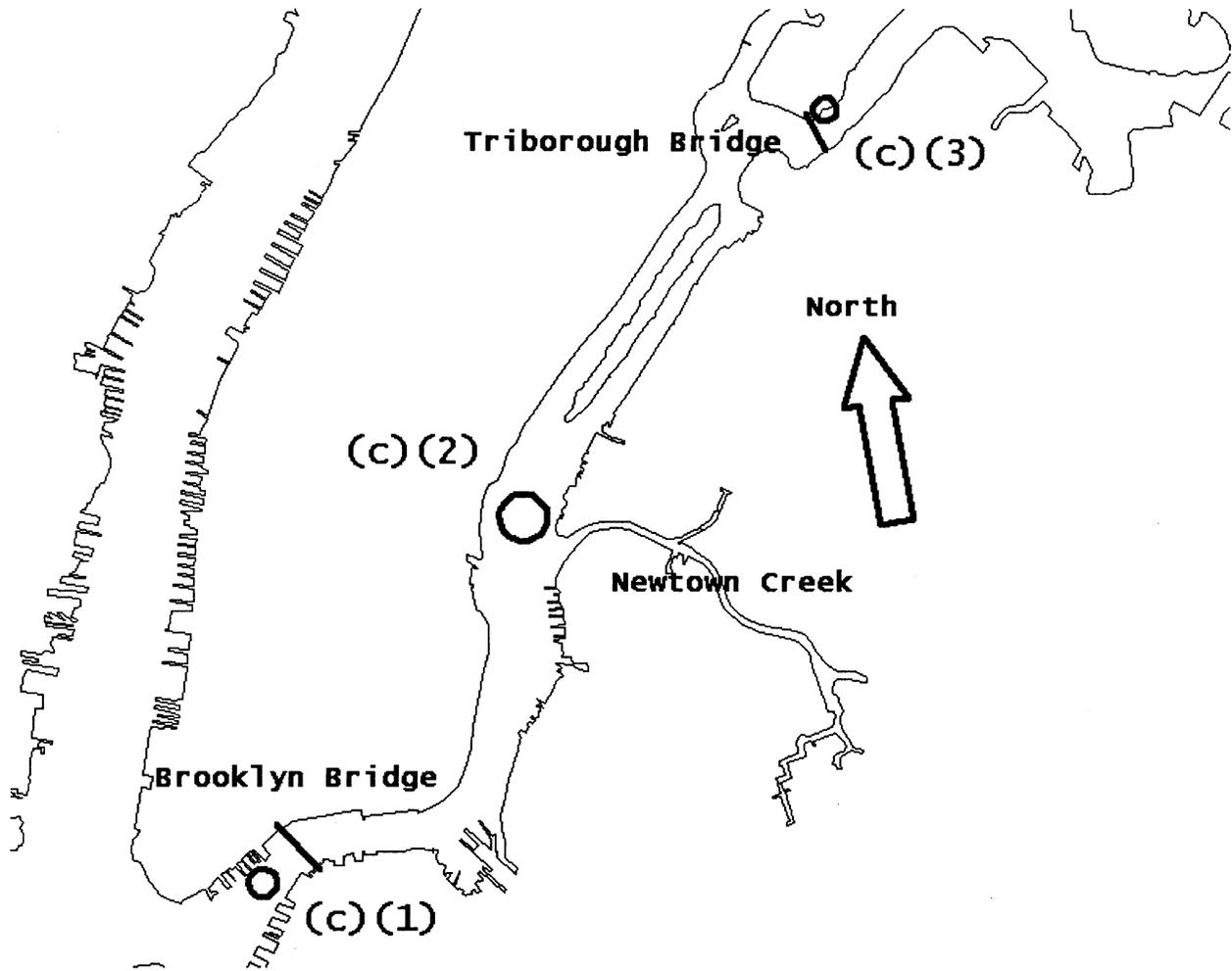
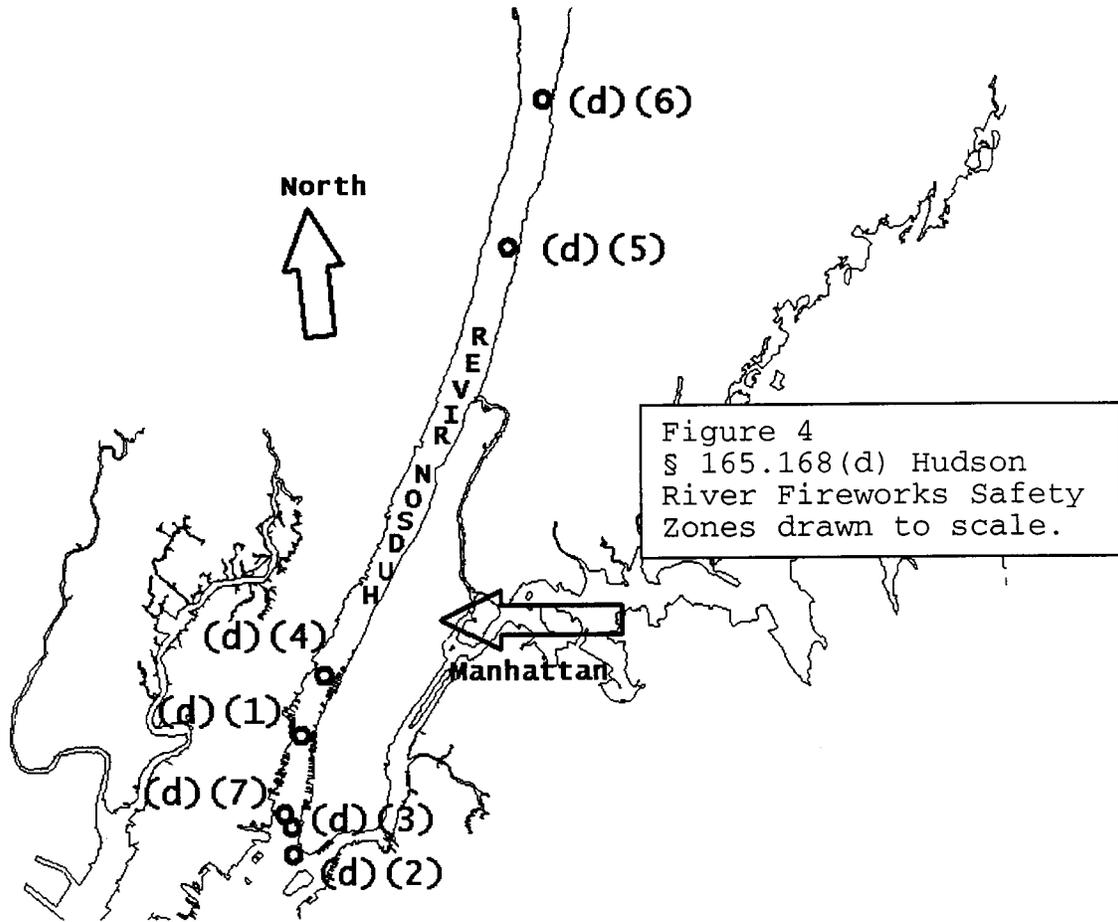


Figure 3  
§ 165.168(c) East River  
Fireworks Safety Zones  
drawn to scale.





Dated: May 4, 2000.

**L.M. Brooks,**

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

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