

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Parts 100 and 165**

[CGD01–05–012]

RIN 1625–AA00 and 1625–AA08

**Safety Zones; Long Island Sound Annual Fireworks Displays**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is revising regulations governing safety zones for fireworks displays in Long Island Sound. This revision establishes 9 new permanent safety zones, revises the location for one established fireworks safety zone, and amends the notification and enforcement provisions to include additional launches from beach areas. This action is necessary to provide for the safety of life on navigable waters during the events.

**DATES:** This rulemaking is effective June 25, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–05–012 and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Andrea K. Logman, Chief, Waterways Management Division Coast Guard Group/MSO Long Island Sound, Connecticut (203) 468–4429.

**SUPPLEMENTARY INFORMATION:****Regulatory History**

On April 25, 2005, the Captain of the Port signed a notice of proposed rulemaking (NPRM) entitled “Safety Zones; Long Island Sound Annual Fireworks Displays.” The NPRM was published in the **Federal Register** (70 FR 23821) on 5 May 2005. No comments were received on the proposed rule. No public hearing was requested, and none was held.

Since regulations located in 33 CFR 100.114(a) will be removed and redesignated, the Commander, First Coast Guard District must authorize that change. Though the Captain of the Port, Long Island Sound, provided the notice of the proposed rule in the **Federal Register** (70 FR 23821), the Commander, First Coast Guard District incorporates that notice and any and all comments regarding the rule into this final rule.

In accordance with 5 U.S.C. (d)(3), the Coast Guard finds good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard wished to provide the public with the opportunity to comment on this rulemaking. By doing so, the timeframe for the publication of the final rule has been reduced to less than 30 days, in order to make this regulation effective for the scheduled dates of the events for which regulations are being established or modified herein, several of which are at the end of June or the beginning of July, 2005. The delay inherent in publication of this final rule 30 days in advance of its effective date is contrary to the public interest and impracticable, as immediate action is needed to protect the maritime community from the hazards associated with fireworks events. The Coast Guard Group/Marine Safety Office Long Island Sound will make this Final Rule widely available to the maritime community and general public through notification in the Local Notice to Mariners, marine safety information bulletins and through local waterways users groups.

**Background and Purpose**

The Coast Guard is revising its safety zones for fireworks displays in the Long Island Sound Captain of the Port Zone found at Title 33 Code of Federal Regulations (CFR), section 165.151. These revisions add 9 permanent safety zones and revises one current safety zone that will be activated for fireworks displays that occur on an annual basis. Of the 9 new permanent safety zones, 5 of these currently have special local regulations established under 33 CFR 100.114, which will be moved to 33 CFR 165.151. These 5 events have specific dates assigned to them under that regulation. However, due to scheduling issues, the events have not been held over the last several years on the dates specified. As a result, numerous temporary regulations have needed to be implemented to provide for safety or the maritime community. As the events require a limited access but flexibility in scheduling, a permanent safety zone as opposed to special local regulations is prudent. This will ensure the safety of the maritime community viewing the displays or transiting in the vicinity of the displays. Once implemented as safety zones, the special local regulations located at 33 CFR 100.114 for these events will be removed. The remaining 4 new safety zones are for annual events that do not currently have permanent safety zones or special local regulations.

The events for which safety zones are being established are held in the following 9 locations: On the Thames River off of Norwich, CT; in Branford Harbor off of Branford Point, Branford, CT on Long Island Sound; in Long Island Sound off Cosey Beach, East Haven, CT; in Long Island Sound off Compo Beach, Westport, CT; in Westbrook Harbor on Long Island Sound, CT; in Long Island Sound off Calf Pasture Beach, Norwalk, CT; in Long Island Sound off Short Beach, Stratford, CT; in Long Island Sound off Old Black Point Beach, East Lyme, CT; and in Northport Bay off Asharoken Beach, NY. By establishing permanent safety zones, the Coast Guard will eliminate the need to establish temporary rules annually. The Coast Guard has promulgated safety zones or special local regulations for fireworks displays at all of these 9 areas in the past and has received no public comments or concerns regarding the impact to waterway traffic from these annually recurring events. Additionally, this rulemaking is revising the regulations currently in place in 33 CFR 165.151(a)(10) for the Mashantucket Pequot Fireworks Safety zone. This revision changes the location of the three barges used for this fireworks display, increasing the distance between each of the barges. Smaller-sized fireworks shells, a maximum of a 10–inch shell, will be used on the two outer barges, decreasing the safety zone radius for each of the two outer barges from 1200 feet to 1000 feet. The center barge in this display will continue to have a maximum of 12–inch shells, and will continue to have a 1200–foot radius safety zone surrounding it. Due to the changes in the outer barge shell size, there is no increase to the restricted area of the safety zone as compared with what has been in place for this event in 33 CFR 165.151(a)(10). The Coast Guard has received no public comments or concerns regarding the impact to waterway traffic from the Mashantucket Pequot Fireworks.

While this regulation will prevent vessels from transiting areas made hazardous from the launching of fireworks, vessels may transit in all portions of the affected waterways except for those areas covered by the zones.

**Discussion of Comments and Changes**

No comments were received in response to the NPRM, however, one change is made to the final rule. Within the Enforcement Period selection of 33 CFR 165.151, the word “posted” is changed to “present” in order to more accurately reflect the location of the

barge or land based launch site sign that reads "FIREWORKS—STAY AWAY."

#### Discussion of Rule

The Coast Guard is revising 33 CFR section 165.151 to add 9 new safety zones for fireworks displays that occur on a regular basis in the same locations. The Coast Guard is also revising 33 CFR 165.151(a)(10), an established safety zone for the Mashantucket Pequot Fireworks. The sizes of these safety zones were determined in accordance with Navigational and Vessel Inspection Circular (NVIC) 07-02, entitled *Marine Safety at Fireworks Displays*, and in accordance with National Fire Protection Association Standard 1123, Code for Fireworks Displays (100-foot distance per inch of diameter of the fireworks mortars). Barge locations and mortar sizes were determined to ensure appropriate safety zone locations will not interfere with any known marinas or piers. The 9 new safety zones and revisions to 33 CFR 165.151(a)(10) for the Mashantucket Pequot Fireworks Safety Zone are described below under the respective event. All coordinates are North American Datum 1983 (NAD 83).

#### Norwich July Fireworks

The safety zone for the annual Norwich July Fireworks display encompasses all waters of the Thames River turning basin within a 600-foot radius of the fireworks barge in approximate position 41°31'20.9" N, 072°04'45.9" W, located off of Norwich, CT.

#### Town of Branford Fireworks

The safety zone for the annual Town of Branford fireworks display encompasses all waters of Branford Harbor off of Branford Point within a 600-foot radius of the fireworks launch area located on Branford Point in approximate position 41°15'30" N, 072°49'22" W.

#### Vietnam Veterans Local 484; Town of East Haven Fireworks

The safety zone for the annual Vietnam Veterans Local 484/Town of East Haven fireworks display encompasses all waters of Long Island Sound off of Cosey Beach, East Haven, CT within a 1000-foot radius of the fireworks barge in approximate position 41°14'19" N, 072°52'9.8" W.

#### Westport Police Athletic League Fireworks

The safety zone for the annual Westport Police Athletic League fireworks display encompasses all waters of Long Island Sound Off Compo Beach, Westport, CT within a 800-foot

radius of the fireworks barge in approximate position 41°09'2.5" N, 073°20'1.1" W.

#### Westbrook, CT July Celebration

The safety zone for the annual Westbrook July Celebration fireworks display encompasses all waters of Westbrook Harbor, Westbrook, CT within a 800-foot radius of the fireworks barge located in approximate position 41°16'50" N, 072°26'14" W.

#### Norwalk Fireworks

The safety zone for the annual Norwalk Fireworks display encompasses all waters of Long Island Sound off of Calf Pasture Beach in Norwalk, CT within a 1000-foot radius of the fireworks barge located in approximate position 40°05'10" N, 073°23'20" W.

#### Town of Stratford Fireworks

The safety zone for the annual Town of Stratford fireworks display encompasses all waters of Long Island Sound off of Short Beach in Stratford, CT, within a 800-foot radius of the fireworks launch area located in approximate position 41°09'5" N, 073°06'5" W.

#### Old Black Point Beach Association Fireworks

The safety zone for the annual Old Black Point Beach Association fireworks display encompasses all waters of Long Island Sound off of Old Black Point Beach in East Lyme, CT, within a 1000-foot radius of the fireworks launch area located on Old Black Point Beach at approximate position 41°17'34.9" N, 072°12'55.6" W.

#### Village of Asharoken Fireworks

The safety zone for the annual Village of Asharoken Fireworks encompasses all waters of Northport Bay off of Asharoken Beach in Asharoken, NY, within a 600-foot radius of the fireworks launch area located in approximate position 40°55'30" N, 072°21' W.

#### Mashantucket Pequot Fireworks

The safety zone for the Mashantucket Pequot Fireworks includes all waters of the Thames River within 1200-feet of a fireworks barge located at 41°20'57.1" N, 72°05'22.1" W; and within 1000-feet of each of the fireworks barges located at 41°21'03.3" N, 72°05'24.5" W and 41°20'51.75" N, 72°05'18.90" W.

This rulemaking also changes 33 CFR 165.151(b) and (c). These changes clarify the marking requirements for fireworks barges, described below, and include marking requirements for

fireworks launches from land within the regulations.

#### Schedule

The Coast Guard does not know the specific annually recurring dates of these fireworks display safety zones. Coast Guard Group/MSO Long Island Sound or Coast Guard Group Moriches 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 and facsimile broadcasts may also be made to notify the public regarding these events. Broadcast notice to mariners will begin 12 to 24 hours before the event is scheduled to begin. Fireworks barges used in the locations stated in this rulemaking will also have a sign on their port and starboard side labeled "FIREWORKS—STAY AWAY". This will provide on-scene notice that the safety zone the fireworks barge is located in will be activated on that day. This sign will consist of, at a minimum, 10" high by 1.5" wide red lettering on a white background. Displays launched from shore sites will have a sign labeled "FIREWORKS—STAY AWAY" with the same size requirements.

The enforcement period for each safety zone is from 8 p.m. to 11 p.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 Long Island Sound, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Mariners may request permission to transit through these safety zones from the Captain of the Port Long Island Sound or his on-scene representative. On-scene representatives are commissioned, warrant, and petty officers of the U.S. Coast Guard.

This rule is begin established to provide for the safety of life on navigable waters during the events.

#### 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 the regulatory policies and procedures of

DHS is unnecessary. This regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Vessels will only be restricted from the safety zone areas for a 3 hour period; vessels may transit in all portions of the affected waterways except for those areas covered by the safety zones; The Coast Guard has promulgated either safety zones or special local regulations in accordance with 33 CFR Part 100 for fireworks displays at all 10 locations areas in the past and has not received notice of any negative impact caused by any of the safety zones or special local regulations. Additionally, advance notifications will also be made to the local maritime community by the Local Notice to Mariners well in advance of the events. Marine information facsimile broadcasts may also be made.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: Commercial vessels wishing to transit, fish or anchor in the portions of the Thames River, Long Island Sound or Northport Bay covered by this rule. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will 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 will 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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business,

organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Andrea K. Logman, Waterways Management Officer or the Command Center at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4429 or (203) 468–4444 respectively.

#### Collection of Information

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

#### Federalism

We have analyzed this rule under Executive Order 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 rule does not impose an unfunded mandate.

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

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

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is to be categorically excluded from further environmental documentation. A “Categorical Exclusion Determination”

is available in the docket where indicated under **ADDRESSES**.

### List of Subjects

#### 33 CFR Part 100

Marine safety, Navigation (water), Reporting and Recordkeeping requirements, waterways.

#### 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 is amending 33 CFR parts 100 and 165 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

#### § 100.114 [Amended]

■ 2. In the table for § 100.114(a), remove 6.4 and redesignate 6.5 and 6.6 as 6.4 and 6.5 respectively, remove 7.38, 7.39, 7.41 and 7.42, and redesignate 7.40 as 7.38, and 7.43 through 7.51 as 7.39 through 7.47 respectively.

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

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

**Authority:** 33 U.S.C. 1226 and 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. Revise § 165.151(a)(10) and add new § 165.151(a)(18) to (26), and revise paragraphs (b) and (c) to read as follows:

#### § 165.151 Safety Zones; Long Island Sound annual fireworks displays.

(a) \* \* \*

(10) *Mashantucket Pequot Fireworks Safety Zone*. All waters of the Thames River off of New London, CT, within a 1200-foot radius of a fireworks barge located in approximate position 41°20'57.1" N, 72°05'22.1" W; and within 1000-feet of fireworks barges located in approximate positions: barge one, 41°21'03.3" N, 72°05'24.5" W; and barge two, 41°20'51.75" N, 72°05'18.90" W.

\* \* \*

(18) *Norwich July Fireworks Safety Zone*. All waters of the Thames River within a 600-foot radius of the fireworks launch area in approximate position 41°31'20.9" N, 72°04'45.9" W, located off of Norwich, CT.

(19) *Town of Branford Fireworks Safety Zone*. All waters of Branford Harbor off of Branford Point within a 600-foot radius of the fireworks launch area located on Branford Point in approximate position 41°15'30" N, 072°49'22" W.

(20) *Vietnam Veterans Local 484/ Town of East Haven Fireworks Safety Zone*. All waters of Long Sound off of Cosey Beach, East Haven, CT within a 1000-foot radius of the fireworks barge in approximate position 41°14'19" N, 072°52'9.8" W.

(21) *Westport Police Athletic League Fireworks Safety Zone*. All waters of Long Island Sound off Compo Beach, Westport, CT within a 800-foot radius of the fireworks barge in approximate position 41°09'2.5" N, 073°23'20" W.

(22) *Westbrook, CT July Celebration Safety Zone*. All waters of Westbrook Harbor in Long Island Sound within a 800-foot radius of the fireworks barge located in approximate position 41°16'50" N, 072°26'14" W.

(23) *Norwalk Fireworks Safety Zone*. All waters of Long Island Sound off of Calf Pasture Beach in Norwalk, CT within a 1000-foot radius of the fireworks barge located in approximate position 40°05'10" N, 073°23'20" W.

(24) *Town of Stratford Fireworks Safety Zone*. All waters of Long Island Sound off of Short Beach in Stratford, CT, within a 800-foot radius of the fireworks launch area located in approximate position 41°09'5" N, 073°06'5" W.

(25) *Old Black Point Beach Association Fireworks Safety Zone*. All waters of Long Island Sound off Old Black Point Beach in East Lyme, CT, within a 1000-foot radius of the fireworks launch area located on Old Black Point Beach in approximate position 41°17'34.9" N, 072°12'55.6" W.

(26) *Village of Asharoken Fireworks Safety Zone*. All waters of Northport Bay off of Asharoken Beach in Asharoken, NY within a 600-foot radius of the fireworks launch area located in approximate position 40°55'30" N, 072°21' W.

(b) *Notification*. Coast Guard Group/ Marine Safety Office Long Island Sound and Coast Guard Group Moriches 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—STAY AWAY". Displays launched from shore sites will have a sign labeled

"FIREWORKS—STAY AWAY" with the same size requirements. The signs required by this section must consist of red letters at least 10 inches high, and 1.5 inch thick on a white background.

(c) *Enforcement period*. Specific zones in this section will be enforced from 8 p.m. to 11 p.m. each day a barge or land based launch site with sign reading "FIREWORKS—STAY AWAY" is present in that zone.

\* \* \* \* \*

Dated: June 24, 2005.

**Robert W. Durfee,**

*Captain, U.S. Coast Guard, Commander, First Coast Guard District, Acting.*

[FR Doc. 05–15076 Filed 7–28–05; 8:05 am]

**BILLING CODE 4910–15–M**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[CGD07–04–148]

RIN 1625–AA09

#### Drawbridge Operation Regulation; CSX Railroad, Hillsborough River, Mile 0.7, Tampa, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulation governing the operation of the CSX Railroad Bridge across the Hillsborough River, Mile 0.7, Tampa, Florida. Previously owned by the Seaboard System Railroad, the bridge is now the CSX Railroad Bridge vice the Seaboard System Railroad Bridge. This rule allows the bridge to operate using an automated system without an onsite bridge tender.

**DATES:** This rule is effective August 29, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–04–148] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Suite 432, Miami, Florida 33131–3050, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Bridge Branch (obr), Seventh Coast Guard District, maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gwin Tate, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6747.