

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 may be small entities: owners or operators of vessels intending to transit the Intracoastal waterway at mile 1084.6. Although this temporary rule will be in effect for nine months, vessel traffic can still pass through the drawbridge every 30 minutes during weekdays and Saturday, and on demand at all other times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

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 unfunded mandate costs. This rule will 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 E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this 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

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary regulations: For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. From May 25, 2000 through February 28, 2001, in § 117.261, a new paragraph (rr) is temporarily added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(rr) *West 79th Street Causeway Drawbridge, mile 1084.6, Miami, Florida.* The draw need open only on the hour and half-hour, Monday through Saturday, from 7 a.m. to 6 p.m.,

beginning May 25, 2000 through February 28, 2001. The draw will open on demand during all other periods including holidays and Sundays.

Dated: May 23, 2000.

T.W. Allen,

Rear Admiral, Commander, Seventh Coast Guard District.

[FR Doc. 00-14152 Filed 6-5-00; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-00-009]

RIN 2115-AA97

Safety Zone: OPSAIL 2000 Fireworks Displays and Search and Rescue Demonstrations, Port of New York/New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing four temporary safety zones for fireworks displays located on New York Harbor, the East River, and Hudson River, and one temporary safety zone for Search and Rescue demonstrations on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the events. It will restrict traffic in portions of New York Harbor, the East and Hudson River.

DATES: This rule is effective from 6:30 p.m. on July 4, 2000 until 6 p.m. on July 8, 2000.

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 (CGD01-00-009) and are available for inspection or copying at Waterways Oversight Branch (CGD01-00-009), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York, 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354-4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 17, 2000, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: OPSAIL 2000 Fireworks Displays and Search and Rescue Demonstrations, Port of New

York/New Jersey in the **Federal Register** (65 FR 31293). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing four temporary safety zones for fireworks displays, and one temporary safety zone for Search and Rescue demonstrations being held in conjunction with OPSAIL 2000.

Macy's/OPSAIL 2000 Fireworks

The Coast Guard is establishing four temporary safety zones for the Macy's/OPSAIL 2000 fireworks display in New York Harbor, the East River, and Hudson River, on July 4, 2000. The first safety zone includes all waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42'15.5"N 074°01'07" W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41'34.5"N 074°01'11" W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41'25.3"N 074°00'42.5"W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn through the southern point of Roosevelt Island from East 47th Street, Manhattan to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area inside the safety zone at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and a line drawn through the East River Main Channel Lighted Buoy 18 (LLNR 27335), to a point on the Brooklyn shore at North 9th Street. All vessels must be in this location by 6:30 p.m. (e.s.t.) on July 4, 2000.

Once in position within the zone, all vessels must remain in position until released by the Captain of the Port, New York. On-scene-patrol personnel will monitor the number of designated

vessels taking position in the viewing area of the zone. If it becomes apparent that any additional spectator vessels in the viewing area will create a safety hazard, the patrol commander may prevent additional vessels from entering it. After the event has concluded and the fireworks barges have safely relocated outside of the main channel, vessels will be allowed to depart the viewing area as directed by the patrol commander.

We created the viewing area within this safety zone in order to reduce significant safety hazards in this area of the East River, due in great part, to the extremely strong currents. Based on experience from similar events in this area of the East River, we are concerned that smaller spectator craft located in between the two fireworks barge sites could drift into the fallout zone of either barge site. Additionally, experience from previous events has also shown that having large and small craft located in a confined area presents safety hazards for both sized vessels due to vessel wake, anchor swing radii, and restricted visibility of larger vessels in a confined area.

One safety zone is required for this large section of the East River because the Coast Guard has a limited amount of assets available to patrol this event of national significance. If we made this zone into two zones, we could not adequately enforce the boundaries of both zones, and the safety of the port and the mariners would be unacceptably compromised because of the two nearby fireworks barge locations in a confined waterway with significant currents.

The Staten Island Ferries may continue services to their ferry slip at Whitehall Street, The Battery, Manhattan, New York. Continuing ferry services in the southwestern portion of the safety zone will not create a hazard nor be threatened by the fireworks display because Vessel Traffic Services New York will monitor and control the transits of these ferries. Failure to allow these continued ferry services will have a negative impact on residents of Staten Island, New York, and those persons traveling to and from Manhattan at the end of the holiday weekend.

The second safety zone includes all waters of the Hudson River north of a line drawn from the southwest corner of Pier 94, Manhattan, to 40°46'31.3"N, 074°00'37.9"W (NAD 1983) onshore in Weehawken, NJ, and south of a line drawn from the northeast corner of Pier D, Weehawken, NJ, to the northwest corner of the northern pier of the West 30th Street Heliport in Manhattan.

The third safety zone includes all waters of Upper New York Bay, east of Liberty Island, bound by the following points: 40°41'33.2"N 074°02'24.4"W; 40°41'11.3"N 074°02'44.4"W; 40°41'02.1"N 074°02'25.1"W; 40°41'09.1"N 074°02'10.2"W; 40°41'25.6"N 074°02'09.6"W (NAD 1983); thence to the point of beginning.

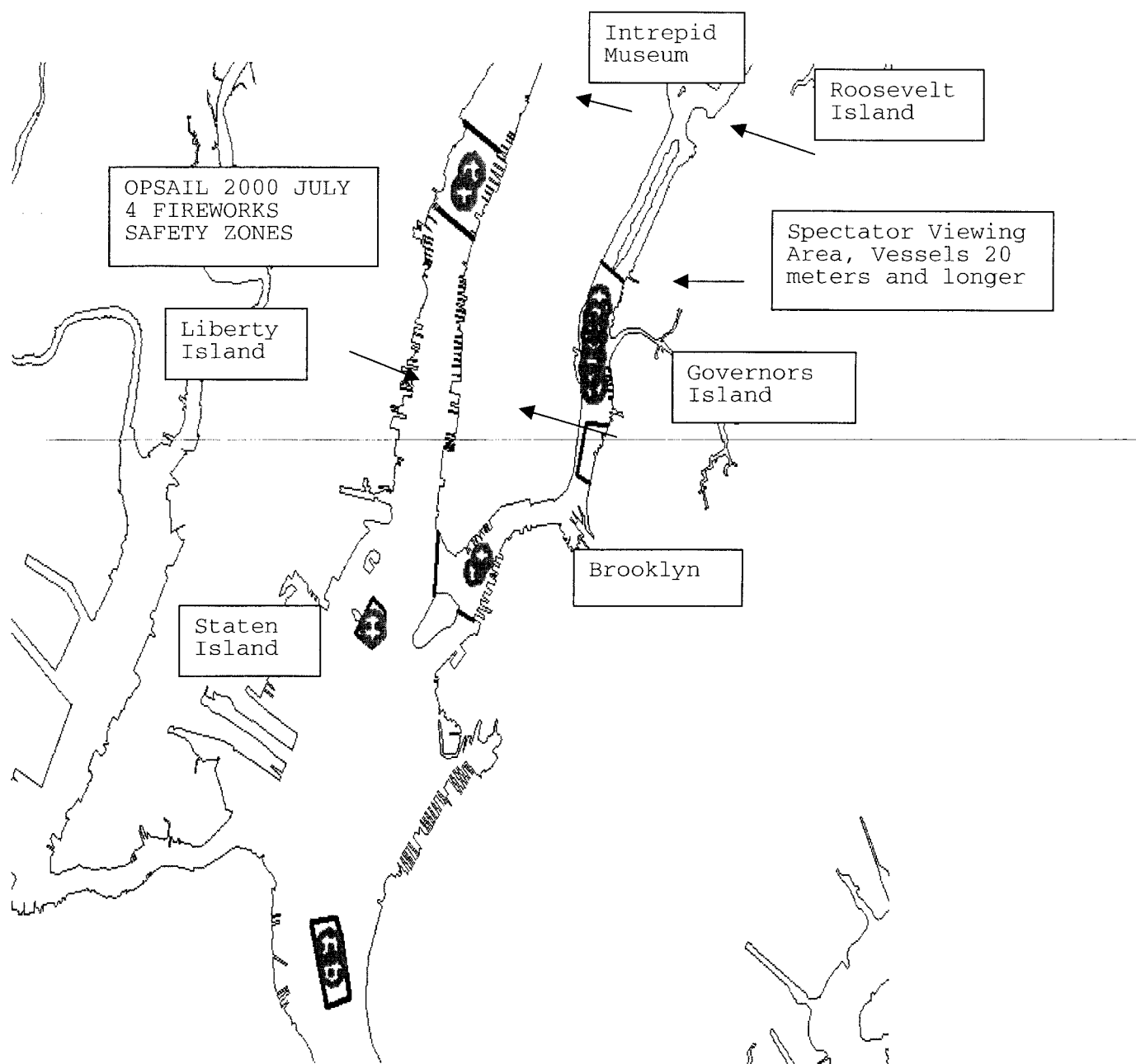
The fourth safety zone includes all waters of Anchorage Channel, Upper New York Bay, bound by the following points: 40°38'12.4"N 074°03'05.6"W; 40°38'01.5"N 074°03'00.7"W; 40°37'21.0"N 074°02'50.0"W; 40°37'15.6"N 074°03'16.6"W; 40°38'08.3"N 074°03'37.4"W (NAD 1983); thence to the point of beginning.

The safety zones will be enforced from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 4, 2000. If the event is cancelled due to inclement weather, then this section will be enforced from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 5, 2000. The safety zones prevent vessels from transiting these portions of Upper New York Bay, the East River and the Hudson River, and is needed to protect boaters from the hazards associated with fireworks launched from 13 separate barges in the area. No vessel may enter the safety zones without permission of the Captain of the Port, New York.

These safety zones cover the minimum area needed and impose the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via Local Notice to Mariners, marine information broadcasts, facsimile, OPSAIL Inc.'s website, and Macy's waterways telephone "hotline" at 212-494-5247.

BILLING CODE 4910-15-U



Search and Rescue Demonstrations

The Coast Guard is also establishing a temporary safety zone for the OPSAIL Search and Rescue demonstrations held on and over the Hudson River between Piers 83 and 90. This safety zone includes all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46'10"N, 074°00'13"W (NAD 1983), south to approximate position 40°45'54"N, 074°00'25"W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall. This safety zone will be enforced from 12 p.m. (e.s.t.) until 6 p.m. (e.s.t.), Thursday, July 6, through Saturday, July 8, 2000. It is needed to protect boaters and demonstration participants from the hazards associated with United States Military personnel demonstrating the capabilities of aircraft and watercraft in a confined area of the Hudson River. This safety zone prevents vessels from transiting only a portion of the Hudson River. Marine traffic will still be able to transit through the western 600 yards of the 950-yard wide Hudson River during the Search and Rescue demonstrations. Vessels moored at piers within the safety zone; however, will not be allowed to transit from their moorings without permission from the Captain of the Port, New York, during the effective periods of the safety zone. The Captain of the Port does not anticipate any negative impact on recreational or commercial vessel traffic due to this safety zone.

Public notifications will be made prior to the Search and Rescue Demonstrations via Local Notice to Mariners, marine information broadcasts, facsimile, and OPSAIL Inc.'s website.

Discussion of Comments and Changes

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

Regulatory Evaluation

This 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 rule to be so minimal that a full

Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of New York Harbor, the Hudson River, and East River, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, the sponsor's website and phone hotline, New York Harbor Operations Committee meetings, public meetings for maritime groups, and New York area newspapers, so mariners can adjust their plans accordingly. At no time will commercial shipping access to Port Newark/Port Elizabeth facilities be prohibited. Access to those areas may be accomplished using Raritan Bay, Arthur Kill, Kill Van Kull, and Newark Bay as an alternate route. This will allow the majority of the maritime industrial activity in the Port of New York/New Jersey to continue, relatively unaffected. Similar regulated areas were established for the 1986 and 1992 OPSAIL events, the annual Macy's July 4th fireworks display, and the annual Fleet Week Sea and Air demonstrations. Based upon the Coast Guard's experiences learned from these previous events of a similar magnitude, these regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

The sizes of the fireworks safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 10–12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in these areas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

For the reasons discussed in the Regulatory Evaluation section above, 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 portions of Lower and Upper New York Bay, the Hudson River, and East River during various times from July 4–8, 2000. These regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: although these regulations will apply to a substantial portion of the Port of New York/New Jersey, designated areas for viewing the Fourth of July Fireworks are being established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Maritime traffic will also be able to transit around the areas where the Search and Rescue demonstrations are being held. Before the effective period, the Coast Guard will make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. The Coast Guard is also holding public meetings with maritime groups to explain the schedule of events and approved spectator craft viewing areas. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. We provided explanations of the effect of these regulations on the Port of New York/New Jersey to approximately 18 small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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 will 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.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes five 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 amends 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. Add temporary § 165.T01–009 to read as follows:

§ 165.T01–009 Safety Zones: OPSAIL 2000 Fireworks Displays, and Search and Rescue Demonstrations, Port of New York/New Jersey.

(a) *Safety Zones Locations and Enforcement Periods.*

(1) *East River Fireworks Safety Zone.* All waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42'15.5"N 074°01'07"W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41'34.5"N 074°01'11"W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41'25.3"N 074°00'42.5"W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn through the southern point of Roosevelt Island from East 47th street, Manhattan to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

(2) *Hudson River Fireworks Safety Zone.* All waters of the Hudson River north of a line drawn from the southwest corner of Pier 94, Manhattan, to 40°46'31.3"N, 074°00'37.9"W (NAD 1983) onshore in Weehawken, NJ, and south of a line drawn from the northeast corner of Pier D, Weehawken, NJ, to the northwest corner of the northern pier of the West 30th Street Heliport in Manhattan.

(3) *Liberty Island Fireworks Safety Zone.* All waters of Upper New York Bay, east of Liberty Island, bound by the following points: 40°41'33.2"N 074°02'24.4"W; 40°41'11.3"N 074°02'44.4"W; 40°41'02.1"N 074°02'25.1"W; 40°41'09.1"N 074°02'10.2"W; 40°41'25.6"N 074°02'09.6"W (NAD 1983); thence to the point of beginning.

(4) *Anchorage Channel Fireworks Safety Zone.* All waters of Anchorage Channel, Upper New York Bay, bound by the following points: 40°38'12.4"N 074°03'05.6"W; 40°38'01.5"N 074°03'00.7"W; 40°37'21.0"N 074°02'50.0"W; 40°37'15.6"N 074°03'16.6"W; 40°38'08.3"N 074°03'37.4"W (NAD 1983); thence to the point of beginning.

(5) *Search and Rescue Demonstrations Safety Zone.* All waters of Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46'10"N, 074°00'13"W (NAD 1983), south to approximate position 40°45'54"N, 074°00'25"W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall.

(6) *Enforcement period.* Paragraphs (a)(1) through (a)(4) will be enforced from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on Tuesday, July 4, 2000. If the event is cancelled due to inclement weather, then paragraphs (a)(1) through (a)(4) will be enforced from 6:30 p.m. (e.s.t.) to 11:30 p.m. (e.s.t.) on Wednesday, July 5, 2000.

(7) *Enforcement period.* Paragraph (a)(5) will be enforced daily from 12 p.m. (e.s.t.) until 6 p.m. (e.s.t.) from Thursday, July 6, through Saturday, July 8, 2000.

(b) *Effective period.* This section is effective from 6:30 p.m. (e.s.t.) on July 4, 2000, until 6 p.m. (e.s.t.) on July 8, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, New York.

(3) 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.

(4) Vessels may remain in the safety zone described in paragraph (a)(1) for the purpose of viewing the event in accordance with the following pre-established viewing area: Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and a line drawn through the East River Main Channel Lighted Buoy 18 (LLNR 27335), to a point on the Brooklyn shore at North 9th Street. All vessels must be positioned in this viewing area within the safety zone by 6:30 p.m. (e.s.t.) on July 4, 2000.

Dated: June 1, 2000.

R.E. Bennis,

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

[FR Doc. 00-14111 Filed 6-1-00; 4:28 pm]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

COAST GUARD

33 CFR Part 165

[CGD01-98-151]

RIN 2115-AE84

Regulated Navigation Area: Navigable Waters Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the regulations at 33 CFR 165.100 that establish a Regulated Navigation Area (RNA) within the navigable waters of the First Coast Guard District. This Final Rule makes permanent the existing temporary authority of a Captain of the Port (COTP) to issue exemptions from the positive control of barges provisions of the RNA. These exemptions are authorized in limited circumstances in which an applicant employs equivalent levels of safety in the operation of vessels towing tank barges. This Final Rule removes the expiration date set in the Interim Rule for the exemption authority. The exemption authority is consistent with requirements of the relevant provisions of the Coast Guard Authorization Act of 1998, and with the purposes of environmental protection regulations to reduce the risk of oil spills in the marine environment, while accounting for the impact of the RNA on small entities.

DATES: This Final Rule is effective 1 July 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210-3350.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rich Klein, c/o Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210-3350; telephone 617-223-8243.

SUPPLEMENTARY INFORMATION:

Regulatory History

After the oil spill that resulted from the grounding of the Tank Barge NORTH CAPE off the coast of Rhode Island in 1996, a group comprised of operators of towing vessels and tank

barges, environmental organizations, State agencies, and Coast Guard officials, formed the Regional Risk Assessment Team (RRAT). The purpose of the RRAT was to review operating procedures for tugs and barges in the Northeast. The RRAT issued a report that included recommended actions to minimize risks peculiar to the transportation of petroleum in the waters of the First Coast Guard District.

On October 13, 1998, the Coast Guard published in the **Federal Register** (63 FR 54639) a Notice of Proposed Rulemaking (NPRM) entitled "Regulated Navigation Area: Navigable Waters within the First Coast Guard District." That NPRM addressed many of the issues that the RRAT also addressed.

On November 13, 1998, Congress enacted the Coast Guard Authorization Act of 1998 (Act). Section 311 of the Act required the Coast Guard, under authority delegated by the Secretary of Transportation, to promulgate regulations for the safety of towing vessels and tank barges in waters of the Northeast not later than December 31, 1998. Section 311(b)(1)(B) of the Act required the Coast Guard to fully consider each recommendation from the RRAT report. On December 30, 1998, the Coast Guard published in the **Federal Register** (63 FR 71764) a Final Rule establishing the RNA for the waters of the Northeast.

After publication of the Final Rule, several companies in the towing and tank barge industry affected by the RNA notified the Coast Guard that they were concerned about the economic impact of the RNA's positive barge control provisions. Acting on these concerns, the Coast Guard published an Interim Rule in the **Federal Register** (64 FR 12746) on March 15, 1999, that temporarily authorized COTPs to exempt vessels from the positive barge control provisions based upon equivalent levels of safety. The Interim Rule also sought out comments on the economic impact of the positive barge control provisions on small entities. We conducted a public meeting on April 16, 1999 in New Haven, CT. The meeting was attended by 13 individuals, and there were 8 speakers.

Background and Purpose

Prior to publication of the Interim Rule, 33 CFR 165.100(d)(1)(i) required that single-hull tank barges carrying petroleum and operating in the navigable waters of the First Coast Guard District either be towed by a tug equipped with twin-screws and two engines, or be escorted by a second tug. Double-hull tank barges and certain small barges in confined waters were

exempt from this requirement. The positive control provision in the RNA addressed the hazards associated with operating single-hull tank barges with single-screw tugs in the First Coast Guard District waters. However, it provided little flexibility to address special circumstances. This Final Rule provides COTPs with the authority to address special circumstances. This exemption authority is consistent with RRAT report that had recommended that the Coast Guard establish a regulatory provision authorizing exemptions in limited circumstances.

Under the final regulations, the COTP may consider exempting operators from the positive barge control provision upon the operator's demonstration of equivalent measures of safety. The exemptions, if granted, would result in the continued use of a single-screw and/or single-engine tug to tow a single-hull tank barge without an escort tug on the navigable waters of the First Coast Guard District. In determining whether to grant an exemption of the positive control provisions, the COTP will consider a variety of factors including, but not limited to, the availability of timely on-call tug assistance, the time of transit, the route, the weather, environmental factors, the amount and grade of cargo, the existence and sufficiency of anchoring and retrieval equipment on a manned barge, transits in protected waters, and the construction of the tank barge, as well as the operators' overall safety record.

Requests for exemptions must be submitted in writing to each COTP in whose zone the barge intends to operate. Operators whose vessels transit multiple COTP zones must apply for the exemption from each COTP. COTPs will consult with each other in such cases. The Final Rule is responsive to the needs of small businesses, and gives the COTP the flexibility to weigh risk while continuing to safeguard the environment.

This rule makes permanent the exemption process of the Interim Rule, which is set to expire on June 30, 2000. Because of the need to keep that exemption process authority, under U.S.C. 553(d)(1), this rule is effective in less than 30 days. Additionally, to remain responsive to industry needs while continuing to protect the environment and for the other reasons stated in the preamble of this rule, the Coast Guard finds good cause under 553 U.S.C. (d)(3) for making this rule effective in less than 30 days.