

program, or who are not otherwise eligible for TRICARE/CHAMPUS authorized status, may be authorized for a time-limited period when such authorization is essential to implement the planned treatment under case management. Such providers must not be excluded or suspended as a CHAMPUS provider, must hold Medicare or state certification or licensure appropriate to the service, and must agree to participate on all claims related to the case management treatment.

(ii) Retrospective requests for authorization of waiver of benefit limits/exclusions will not be considered. Authorization of waiver of benefit limits/exclusions is allowed only after all other options for services or supplies have been considered and either appropriately utilized or determined to be clinically inappropriate and/or not cost-effective.

(iii) Experimental or investigational treatment or procedures shall not be cost-shared as an exception to standard benefits under this part.

(iv) TRICARE/CHAMPUS case management services may be provided by contractors designated by the Director, OCHAMPUS.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5000-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-99-001]

RIN 2115-AA97

Safety Zone: Shlofmitz BatMitzvah Fireworks, Hudson River, Manhattan, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Schlofmitz BatMitzvah Fireworks program located on the Hudson River, Manhattan, New York. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

DATES: This rule is effective from 8:00 p.m. until 9:30 p.m., on Saturday, March 20, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354-4193.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On January 8, 1999, Bay Fireworks submitted an application to hold a fireworks program on the waters of the Hudson River. The fireworks program is being sponsored by Dr. Richard Shlofmitz. This regulation establishes a safety zone in all waters of the Hudson River within a 360 yard radius of the fireworks barge located in approximate position 40°44'49"N 074°01'02"W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York. The safety zone is in effect from 8:00 p.m. until 9:30 p.m. on Saturday, March 20, 1999. There is no rain date for this event. The 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 150 yards of the 850-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on commercial traffic due to this event. Additionally, vessels are not precluded from mooring at or getting underway from Piers 59-62 or from the Piers at Castle Point, New Jersey. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts.

Regulatory Evaluation

This final 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. It has not been reviewed by the Office of Management and Budget 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). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This funding is based on the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, Piers 59-62 and the Piers at Castle Point, New Jersey, that vessels may safely transit to the east of the zone, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include 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.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Coast Guard must consider whether this rule will result in an annual

expenditure by state, local, and tribal governments, in the aggregate of \$100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of \$100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01-001 to read as follows:

§ 165.T01-001 Safety Zone: Shlofmitz Batmitzvah Fireworks, Hudson River, Manhattan, New York

(a) *Location.* The following area is a 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), approximately 500 yards west of Pier 60, Manhattan, New York.

(b) *Effective period.* This section is effective from 8:00 p.m. until 9:30 p.m. on Saturday, March 20, 1999. There is no rain date for this event.

(c) *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. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: January 27, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard,

Captain of the Port, New York.

[FR Doc. 99-3513 Filed 2-11-99; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900-AJ75

Board of Veterans' Appeals: Rules of Practice—Notification of Representatives in Connection With Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error

AGENCY: Department of Veterans Affairs.
ACTION: Interim final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) relating to challenges to Board decisions on the grounds of "clear and unmistakable error" (CUE). The amendment provides for notification of the party's representative and an opportunity for a response when the Board receives a request for CUE review.

DATES: *Effective Date:* This amendment is effective February 12, 1999. Comments must be submitted by March 15, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AJ75." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue,

NW, Washington, DC 20420, (202) 565-5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. There are currently 60 Board members, who decide 35,000 to 40,000 such appeals per year.

On January 13, 1999, the Department of Veterans Affairs (VA) published a final rule in the **Federal Register**, 64 FR 2134, implementing the provisions of section 1(b) of Pub. L. No. 105-111 (Nov. 21, 1997), which permits challenges to decisions of the Board on the grounds of "clear and unmistakable error" (CUE).

Historically, 90 percent of appellants at the Board are represented. Approximately 75 percent of all appellants are represented by "recognized organizations"—e.g., The American Legion, Disabled American Veterans, Veterans of Foreign Wars of the United States—with offices at the Board's principal offices in Washington, DC. Even though CUE motions under our rules relate, by definition, to prior Board decisions and therefore are likely to be made by represented parties, we believe that not all represented parties will consult with their representatives prior to filing such a motion. Further, we are concerned that not all such parties will take the time, or have the expertise, to familiarize themselves thoroughly with the rules relating to these motions.

Familiarity with the CUE rules is important because of the finality of a Board decision on a CUE motion. As published, the new rules relating to CUE motions incorporate the jurisprudence of the Court of Veterans Appeals. One of the most important aspects is that there is only one challenge on the grounds of CUE available with respect to a particular Board decision on a particular issue: Once the Board has ruled and once the appellate procedures have run their course, a request for revision of the same decision on the grounds of CUE will no longer be considered. *Russell v. Principi*, 3 Vet. App. 310, 315 (1992); 38 CFR 20.1409(c); see also *Allin v. Brown*, 10 Vet. App. 55, 57 (1997) (where court previously determined that there was no CUE in 1971 regional office decision, the question is no longer open for review).

A party's consultation with his or her representative is important because of the finality of a Board decision on a CUE motion. A representative can help in two ways: first, to make the best possible argument to the Board on a