

to 7 p.m. Monday through Friday, and 10 a.m. to 7 p.m. Saturdays and Sundays and Federal holidays, the draw need to open only on the hour, twenty minutes after the hour, and forty minutes after the hour.

The local mayor has requested that the Coast Guard evaluate a twice an hour schedule. The Florida Department of Transportation, the bridge owner, has a concern related to the length of time during bridge openings on the weekends due to the accumulation of vessels between openings which may directly impact vehicle traffic. For this reason, FDOT will be monitoring the traffic flow through the area during this test and may recommend that the test be terminated at any point that vehicle traffic patterns show a detriment rather than an improvement in traffic flow. This test may have a minor impact on vessel traffic as there will be two openings an hour rather than three during these same time periods.

This deviation will start on the date signed and will continue until 7 p.m. on May 31, 2009, unless otherwise terminated/cancelled due to heavier than normal traffic patterns. The Pinellas Bayway Structure "C" will open on demand except that from 7 a.m. to 7 p.m. the bridge will open on the hour and half-hour and Corey Causeway bridges will open on demand except that from 7 a.m. to 7 p.m. the bridge will open on the quarter and three-quarter hour, seven days a week. Vessels that may pass under the bridges without an opening may do so at any time. Public vessels of the United States and tugs with tows must be passed at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: 14 May 2009.

**R.S. Branham,**

*Rear Admiral, U.S. Coast Guard Commander,  
Seventh Coast Guard District.*

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**BILLING CODE 4910-15-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2009-0424]

RIN 1625-AA00

**Safety Zone: F/V PATRIOT, Massachusetts Bay, MA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is creating a temporary safety zone surrounding the sunken fishing vessel PATRIOT located approximately 17 miles northeast of Scituate, Massachusetts in Massachusetts Bay. The safety zone is in effect while the vessel remains on the sea floor and subsequently re-floated during salvage operations. The safety zone will then move with the vessel until the PATRIOT is safely moored. This action is necessary to ensure that vessels are not endangered by conducting dredging, diving, anchoring, fishing or other activities while the PATRIOT sits on the sea floor. This action is also necessary to assist in providing a safe work environment for those conducting the salvage operation. This temporary rulemaking is needed to protect the environment, the commercial fishing industry, salvage operators and the general public from potential hazards associated with the sunken vessel and from potential hazards associated with the salvage of the vessel.

**DATES:** This rule is effective from May 20, 2009 through June 10, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0424 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0424 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the following location: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Chief Eldridge McFadden, U.S. Coast Guard, Sector Boston, Waterways Management

Division, telephone 617-223-5160, e-mail [Eldridge.C.McFadden@uscg.mil](mailto:Eldridge.C.McFadden@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because initial immediate action was needed to protect the public from the hazards posed by an unknown underwater object located in Massachusetts Bay. This object was later identified as the F/V PATRIOT, located in approximately 95 feet of water 17 miles northeast of Scituate, Massachusetts. This rule replaces the existing safety zone set to May 20, 2009, to ensure, to the extent practicable, the immediate, continued protections for the environment, the commercial fishing industry, salvage operators and the general public from the potential hazards associated with the salvage of the F/V PATRIOT. The loss of the F/V PATRIOT created significant interest in the local fishing community and considerable media interest. Salvage of the F/V PATRIOT has the potential of attracting a variety of on-lookers who may be searching for unanswered questions or are just curious; operations also have the potential of generating considerable media interest. An uncontrolled gathering of vessels surrounding the location of salvage operations has the potential of creating an unsafe work environment during salvage operations. It would be contrary to the public interest for the existing safety zone to lapse on the eve of such operations.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

On January 3, 2009, the F/V PATRIOT, a 54-foot steel-hull boat, sank with the loss of two crewmembers onboard. The vessel was reported to

have an estimated 5,000 gallons of fuel onboard. There were no survivors and the exact position of the vessel was not immediately known. On January 8, 2009, the Coast Guard established a temporary safety zone around a reported underwater object believed to be the F/V PATRIOT, located in Massachusetts Bay approximately 17 miles northeast of Scituate, Massachusetts, in position 42°24'27.34" N., 70°27'17.23" W.

On January 23, 2009, underwater exploratory operations with photographic equipment confirmed that the object was the F/V PATRIOT. The owners of the vessel intend to conduct dive and salvage operations on the vessel. The Coast Guard is implementing this safety zone to surround the F/V PATRIOT and the salvage equipment transporting it from its current resting place to its future berth.

#### Discussion of Rule

This regulation creates a temporary safety zone around the F/V PATRIOT currently located in Massachusetts Bay, Massachusetts, 17 miles northeast of Scituate, Massachusetts. The safety zone will protect the vessel until it is salvaged and subsequently transported to the shore, at which time the safety zone will no longer be enforced. This regulation is necessary to allow the owners of the F/V PATRIOT to safely conduct salvage operations and transport the vessel to shore. This safety zone is in place to protect the public from the hazards associated with a salvage operation. The zone extends for 500 yards, in all directions, from the F/V PATRIOT, currently in approximate position 42°24'27.34" N, 70°27'17.23" W. Once F/V PATRIOT has been re-floated, the safety zone shall remain in effect, reduce in size to 50 yards and move with the vessel until the vessel is safely moored.

This action is intended to prohibit vessels and persons from entering, transiting, anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston, Massachusetts. Public notifications about this safety zone will be made through broadcast and local notice to mariners. Marine traffic may transit safely in surrounding areas, but are restricted from entering the area delineated above.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to the limited area and duration covered by this safety zone.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

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.

This regulation is not significant regulatory action as it encompasses a sunken fishing vessel and the immediate area surrounding it.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, anchor, or fish in a portion of the waterway covered by the safety zone. This rule will not have a significant impact on a substantial number of small entities for the following reasons: The area this rule is affecting is very small and there is plenty of water in the area for vessels to transit around.

#### 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 can better evaluate its effects on them and participate in the rulemaking process.

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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 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 create 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 does 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.

## 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human

environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g.), of the Instruction. This rule involves a temporary safety zone which may last longer than a week and is not an emergency situation. An environmental analysis checklist and a categorical exclusion determination will be 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. 1226, 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01-0424, to read as follows:

### § 165.T01-0424 Safety Zone: F/V PATRIOT, Massachusetts Bay, MA.

(a) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, of Massachusetts Bay within a 500-yard radius of the F/V PATRIOT while located in its currently approximate position of 42°24'27" N, 070°27'17" W. When the vessel is re-floated during salvage operations, the safety zone will reduce to a 50-yard radius and move with the F/V PATRIOT until safely moored.

(b) *Definitions.* The following definition applies to this section: Designated representative means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port Boston.

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

(2) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering the safety zone without permission from the Captain of the Port Boston. In addition, all vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting

salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port Boston or designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel or designated representative by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons desiring to enter the safety zone may request permission from the Captain of the Port Boston via VHF Channel 16 or via telephone at (617) 223-3201.

(d) *Enforcement Period.* This rule will be enforced from May 20, 2009, until midnight June 10, 2009.

Dated: May 20, 2009.

**John N. Healey,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

[FR Doc. E9-12706 Filed 6-1-09; 8:45 am]

**BILLING CODE 4910-15-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 09-1119; MB Docket No. 09-46; RM-11524]

### Television Broadcasting Services; Buffalo, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by New York Television, Inc., the licensee of station WNYO-DT, requesting the substitution of DTV channel 49 for its assigned post-transition DTV channel 34 at Buffalo, New York.

**DATES:** This rule is effective June 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** David J. Brown, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09-46, adopted May 20, 2009, and released May 21, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents