Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 12, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—North Dakota

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''date of final publication'' to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
4–23–03	1–20–04	NDAC 69–05.2–01–02.13, NDAC 69–05.2–12–01.11, NDAC 69–05.2–12–04.2, NDAC 69–05.2–17–07, NDAC 69–05.2–22–07.

[FR Doc. 04–1064 Filed 1–16–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–036]

RIN 1625–AA00

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety and security zones in portions of the waters around La Guardia and John F. Kennedy airports in Queens, NY, the New York City Police Department (NYPD) ammunition depot on Rodman Neck in Eastchester Bay, the Port Newark and Port Elizabeth, NJ, commercial shipping facilities in Newark Bay, and between the Global Marine and Military Ocean Terminals in Upper New York Bay. This action is necessary to safeguard critical port infrastructure and coastal facilities from sabotage, subversive acts, or other threats. The zones prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

DATES: This rule is effective January 20, 2004.

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 (CGD01–03–036) and are available for inspection or copying at room 203, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 19, 2003, we published a temporary final rule; request for comments (TFR) entitled ''Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (68 FR 7926). We received no letters commenting on the temporary rule. No public hearing was requested, and none was held.

On August 7, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (68 FR 46984). We received three letters commenting on the proposed rule. No public hearing was requested, and none was held.

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**. The Coast Guard operates under a three-tiered system of Maritime Security (MARSEC) conditions that are aligned with the color-coded Homeland Security Advisory System Conditions (HSAS). The port of New York has been elevated to the second highest level of alert MARSEC II/HSAS ORANGE based on recent intelligence information. Vessel control measures for the Coast Guard to establish heightened deterrence and detection of terrorist activities in the port are necessary.

Additionally, the Maritime Administration recently issued MARAD Advisory 03–06 (221500ZDEC 03) informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. Further, the heightened security posture of the country and U. S. maritime interests, described below, continues.

For these reasons, 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**. The measures contemplated by the rule are intended to prevent waterborne acts of sabotage or terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Background and Purpose

On September 11, 2001, three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. *See, Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* 67 FR 59447 (September 20, 2002). The

President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of the United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States,* 67 FR 56215 (September 3, 2002).

Since the September 11, 2001, terrorist attacks, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the war in Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The Captain of the Port New York recently established six new safety and security zones throughout the New York Marine Inspection Zone and Captain of the Port Zone. (68 FR 2890, January 22, 2003). Subsequently, the Captain of the Port determined that additional safety and security zones are urgently required to meet critical maritime domain security needs that were not addressed by the earlier rule.

On February 19, 2003, we published a Temporary final rule; request for comments entitled ''Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (68 FR 7926) temporarily establishing these additional safety and security zones. We followed this with the publication of an NPRM to make these additional zones permanent (68 FR 46984, August 7, 2003). We received three letters commenting on the proposed rule. No public hearing was requested, and none was held.

As we proposed in August 2003, the Coast Guard is establishing permanent safety and security zones around La Guardia and John F. Kennedy airports, the New York City Police Department ammunition depot, the Port Newark/Port Elizabeth commercial shipping facilities, and between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel.

These safety and security zones are necessary to provide for the safety of the port and to ensure that vessels, facilities, airports, or ammunition depots, are not used as targets of, or platforms for, terrorist attacks. These zones restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones.

Discussion of Comments and Changes

The Coast Guard received a total of three comments to the notice of proposed rulemaking. What follows is a review of, and the Coast Guard's response to, the issues and questions that were presented by these commenters concerning the proposed regulations.

(1) The Coast Guard received a petition with 75 signatures requesting the waters between the Military Ocean and Global Marine Terminals be authorized for use for recreational boating, crabbing, swimming, fishing, and water skiing as it is asserted to be a quiet anchorage and one of the only areas around Bayonne that can be used by the boaters of Bayonne and Jersey City. The petition suggested the Coast Guard issue identification cards to users after they register with the Coast Guard. The Coast Guard has considered these comments.

The water between the Military Ocean and Global Marine Terminals is not an anchorage area. Recreational boaters may still operate in nearby areas of Newark Bay and Upper New York Bay outside of current safety and security zones. The Coast Guard does not have the resources available, and does not deem it practicable, to regularly conduct background checks, issue identification cards, and check recreational boaters for compliance at the waterway entrance to this commercial and Coast Guard facility. Accordingly, no changes have been made to this rule.

(2) One commenter requested that the Coast Guard consider extending the zones to account for navigational piers extending out into the navigable waters and shifting shorelines, to account for security concerns raised by the commenter. The Coast Guard held two meetings with the commenter to discuss the effects and desirability of any further extensions. Based on the information submitted and the meetings held, the Coast Guard has determined that no additional changes are desired from the proposed rule.

(3) One commenter supported the proposed rulemaking but sought clarification of the Coast Guard's procedures for accessing safety and security zones. The Coast Guard described its current procedures and referred the commenter to the Harbor Operations Safety and Navigation Committee's Web site, *www.harborops.com*, for further information.

No changes have been made to this rulemaking.

Discussion of Proposed Rule

This rule establishes the following safety and security zones:

La Guardia Airport, Bowery and Flushing Bays, Queens, NY

The Coast Guard is establishing a safety and security zone in all waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport. The zone would start at a point onshore in Steinway, Queens (approximate position 40°46′32.1″ N, 073°53′22.4″ W (NAD 1983)), proceeding east/northeast, 200 yards off the shoreline to a point 200 yards off the shoreline and 25 yards southeast of the lighted runway approach extending through Rikers Island Channel, continuing to the northwest, maintaining a distance of 25 yards off the lighted runway approach, to a point 25 yards past the end of the lighted runway approach, to the Rikers Island shoreline in approximate position, 40°47′13.0″ N, 073°53′16.1″ W, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, maintaining a distance of 25 yards around the lighted runway approach extending to the east of Rikers Island, to a point 200 yards off the shoreline of La Guardia Field, continuing 200 yards off the shoreline to where it intersects the southern boundary of Flushing Bay Channel, continuing along the southern boundary of Flushing Bay Channel to where it intersects the northern boundary of the western Special Anchorage Area, and continuing along the northern boundary of the Special Anchorage Area to approximate position 40°45′48.4″ N, 073°51′37.0″ W, (NAD 1983) in East Elmhurst, Queens, thence along the shoreline to the point of origin.

Within the boundaries of this zone, the Coast Guard is establishing another safety and security zone in all waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 200-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones will be communicated by the Captain of the Port to the public by

marine broadcast, local notice to mariners, or notice posted at *www.harborops.com*. This regulatory framework provides the Captain of the Port with the tools to safeguard airport property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

John F. Kennedy (JFK) Airport, Jamaica Bay, Queens, NY

The Coast Guard is establishing four safety and security zones in all waters near JFK Airport bound by the following points:

First, all waters of Bergen Basin north of 40°39′26.4″ N.

Second, all waters of Thurston Basin north of 40°38′21.2″ N.

Third, all waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport. The zone starts at a point onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence 200 yards offshore to approximate position 40°38′42.5″ N, 073°49′13.2″ W, (NAD 1983) proceeding east/southeast, 200 yards off the shoreline to a point 200 yards off the shoreline and 25 yards off the lighted runway approach extending north of East High Meadow, maintaining a distance of 25 yards around the lighted runway approach, to a point 200 yards off the shoreline, continuing 200 yards off the shoreline to Jamaica Bay Grass Hassock Channel LIGHT 23 (LLNR 34485), continuing along the northern boundary of Head of Bay Channel, maintaining a 200 yard boundary to approximate position thence to 40°38′00.8″ N, 073°44′54.9″ W, about 690 yards northeast of Head of Bay Buoy 30 (LLNR 34545) thence to the shoreline at 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

Fourth, within the boundaries of this zone, the Coast Guard is establishing another safety and security zone in all waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 200-yard zone in Jamaica Bay that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of those two zones will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *www.harborops.com*. This regulatory framework provides the Captain of the Port with both the authority to safeguard airport property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY

The Coast Guard is establishing two safety and security zones in all waters of Eastchester Bay near the NYPD Ammunition Depot bound by the following points:

First, all waters of Eastchester Bay within approximately 150 yards of Rodman Neck. The zone starts at a point on the western shore of Rodman Neck in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence 150 yards offshore to 40°51′29.9″ N, 073°48′20.7″ W, (NAD 1983) proceeding around the southern end of Rodman Neck and then north to a point onshore in approximate position 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983), south of the City Island Bridge, thence southwesterly along the shoreline to the point of origin.

Second, within the boundaries of this zone, the Coast Guard is establishing another safety and security zone in all waters of Eastchester Bay within approximately 100 yards of Rodman Neck.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 150-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *www.harborops.com*. This regulatory framework provides the Captain of the Port with the tools to safeguard Police Department property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

Port Newark/Port Elizabeth, Newark Bay, NJ

The Coast Guard is establishing a safety and security zone around the Port Newark and Port Elizabeth facilities in Newark Bay. The zone starts at a point onshore at the New Jersey Extension Bridge in approximate position 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, (NAD 1983) at the western edge of Newark Bay North Reach, proceeding along the western edge of Newark Bay Channel south through Newark Bay Channel Buoy 21 (LLNR 37515), Newark Bay Channel Buoy 19A (LLNR 37507), Newark Bay Channel Lighted Buoy 17 (LLNR 37485), Newark Bay Channel Buoy 15A (LLNR 37477), Newark Bay Channel Lighted Buoy 7 (LLNR 37405), thence west to the shoreline in approximate position 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

Global Marine Terminal, Upper New York Bay

The Coast Guard is establishing a safety and security zone that includes all waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel.

The zones described above are necessary to protect the La Guardia and John F. Kennedy airports, NYPD ammunition depot, the Port Newark/Port Elizabeth commercial shipping facilities, the Global Marine Terminal, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the airports, ammunition depot, and commercial shipping facilities that could potentially cause serious negative impact to vessels, the port, commercial ground shipments by vehicle or rail, airline traffic, or the environment and result in numerous casualties. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Vessels would still be able to transit around the safety and security zones at all times. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Any violation of any safety or security zone herein is punishable by, among others, civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This rulemaking is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

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 paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that: The zones were established by a previous Temporary final rule with a 60-day comment period and no comments were received by the Coast Guard; the zones implicate relatively small portions of the waterway; vessels will be able to transit around the safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth and Global Marine Terminal are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within those areas; and the Captain of the Port will relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port allows him to do so.

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 will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the New York Marine Inspection and Captain of the Port Zones in which entry will be prohibited by the safety or security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones implicate relatively small portions of the waterway; vessels will be able to transit around the safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth and the Global Marine Terminal are already subject to control of the Vessel Traffic Service and previously established safety and security zones; and the Captain of the Port will relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port allows him to do so.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

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 might 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. 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. 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.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because it establishes safety and security 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, and 160.5; 49 CFR 1.46. Department of Homeland Security Delegation No. 0170.

■ 2. In § 165.169, add paragraphs (a)(7) through (a)(11) to read as follows:

§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) * * *

* * * * *

(7) *La Guardia Airport, Bowery and Flushing Bays, Queens, NY.* (i) *Location: 200-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens, in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′52.8″ N, 073°53′09.3″ W, thence to 40°46′54.8″ N, 073°52′54.2″ W, thence to 40°46′59.3″ N, 073°52′51.3″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′10.6″ N, 073°52′06.7″ W, thence to 40°47′01.9″ N, 073°52′02.4″ W, thence to 40°46′50.4″ N, 073°52′08.1″ W, thence to 40°46′26.8″ N, 073°51′18.5″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′51.2″ N, 073°50′59.6″ W, thence to 40°45′49.5″ N, 073°51′07.2″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′02.3″ N, 073°51′20.1″ W, thence to 40°45′48.4″ N, 073°51′37.0″ W, (NAD 1983) thence along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens, in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′50.6″ N, 073°53′07.3″ W, thence to 40°46′53.0″ N, 073°52′50.9″ W, thence to 40°46′57.6″ N, 073°52′47.9″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′07.9″ N, 073°52′09.2″ W, thence to 40°47′01.4″ N, 073°52′06.1″ W, thence to 40°46′50.0″ N, 073°52′14.6″ W, thence to 40°46′22.2″ N, 073°51′16.0″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′52.4″ N, 073°51′00.2″ W, thence to 40°45′50.6″ N, 073°51′07.9″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′04.0″ N, 073°51′23.3″ W, thence to 40°45′51.2″ N, 073°51′38.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(7) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(7)(i) that lies outside of the waters described in paragraph (a)(7)(ii). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(7)(i) and (a)(7)(ii) will be communicated by the Captain of the Port to the public by marine broadcast, or local notice to mariners, or notice posted at *www.harborops.com.*

(8) *John F. Kennedy Airport, Jamaica Bay, Queens, NY.* (i) *Location: Bergen Basin.* All waters of Bergen Basin north of 40°39′26.4″ N.

(ii) *Location: Thurston Basin.* All waters of Thurston Basin north of 40°38′21.2″ N.

(iii) *Location: 200-Yard Zone.* All waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens, in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′42.5″ N, 073°49′13.2″ W, thence to 40°38′00.6″ N, 073°47′35.1″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°37′59.4″ N, 073°47′32.6″ W, thence to 40°37′46.1″ N, 073°47′07.2″ W, thence to 40°37′19.5″ N, 073°47′30.4″ W, thence to 40°37′05.5″ N, 073°47′03.0″ W, thence to 40°37′34.7″ N, 073°46′40.6″ W, thence to 40°37′20.5″ N, 073°46′23.5″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′36.9″ N, 073°45′52.8″ W, thence to 40°38′00.8″ N, 073°44′54.9″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

(iv) *Location: 100-Yard Zone.* All waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens, in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′45.1″ N, 073°49′11.6″ W, thence to 40°38′02.0″ N, 073°47′31.8″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°38′00.8″ N, 073°47′29.4″ W, thence to 40°37′47.4″ N, 073°47′02.4″ W, thence to 40°37′19.9″ N, 073°47′25.0″ W, thence to 40°37′10.0″ N, 073°47′03.7″ W, thence to 40°37′37.7″ N, 073°46′41.2″ W, thence to 40°37′22.6″ N, 073°46′21.9″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′40.0″ N, 073°45′55.6″ W, thence to 40°38′02.8″ N, 073°44′57.5″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

(v) *Enforcement period.* The zones described in paragraphs (a)(8) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(8)(iii) that lies outside of the waters described in paragraph (a)(8)(iv). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(8)(iii) and (a)(8)(iv) will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *www.harborops.com.*

(9) *NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY.* (i) *Location: 150-Yard Zone.* All waters of Eastchester Bay within approximately 150 yards of Rodman Neck bound by the following points: Onshore in

approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′29.9″ N, 073°48′20.7″ W, thence to 40°51′16.9″ N, 073°48′22.5″ W, thence to 40°51′07.5″ N, 073°48′18.7″ W, thence to 40°50′54.2″ N, 073°48′11.1″ W, thence to 40°50′48.5″ N, 073°48′04.6″ W, thence to 40°50′49.2″ N, 073°47′56.5″ W, thence to 40°51′03.6″ N, 073°47′47.3″ W, thence to 40°51′15.7″ N, 073°47′46.8″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Eastchester Bay within approximately 100 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′30.1″ N, 073°48′19.0″ W, thence to 40°51′16.8″ N, 073°48′20.5″ W, thence to 40°51′07.9″ N, 073°48′16.8″ W, thence to 40°50′54.9″ N, 073°48′09.0″ W, thence to 40°50′49.7″ N, 073°48′03.6″ W, thence to 40°50′50.1″ N, 073°47′57.9″ W, thence to 40°51′04.6″ N, 073°47′48.9″ W, thence to 40°51′15.9″ N, 073°47′48.4″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(9) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(9)(i) that lies outside of the waters described in paragraph (a)(9)(ii). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(9)(i) and (a)(9)(ii) will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *www.harborops.com*.

(10) *Port Newark/Port Elizabeth, Newark Bay, NJ.* All waters of Newark Bay bound by the following points: 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, thence to 40°41′10.7″ N, 074°07′45.9″ W, thence to 40°40′54.3″ N, 074°07′55.7″ W, thence to 40°40′36.2″ N, 074°08′03.8″ W, thence to 40°40′29.1″ N, 074°08′06.3″ W, thence to 40°40′21.9″ N, 074°08′10.0″ W, thence to 40°39′27.9″ N, 074°08′43.6″ W, thence to 40°39′21.5″ N, 074°08′50.1″ W, thence to 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

(11) *Global Marine Terminal, Upper New York Bay.* All waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel.

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Dated: December 31, 2003.

C.E. Bone,

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

[FR Doc. 04–1136 Filed 1–16–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. SD–001–0016a; FRL–7606–6]

Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; Regulations for State Facilities in Rapid City

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of South Dakota on June 27, 2002. The June 27, 2002, submittal consists of revisions to the administrative rules of South Dakota. These revisions add a new chapter to regulate fugitive emissions of particulate matter from State facilities and State contractors that conduct a construction activity or continuous operation activity in the Rapid City air quality control zone. The intended effect of this action is to make the revisions to the administrative rules of South Dakota federally enforceable. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on March 22, 2004, without further notice, unless EPA receives adverse comment by February 19, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, 999 18th Street, Suite 300, Mailcode 8P–AR, Denver, Colorado 80202, (303) 312–6144, e-mail *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information ?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under (SD–001–0016). The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. Copies of the incorporation by reference material are also available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460.

2. *Copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Copies of the State documents relevant to this action are also available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on, Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other