

Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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—[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, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–098 is added to read as follows:

§ 165.T07–098 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* This section establishes temporary fixed security zones encompassing 20 yards around all commercial tank and freight vessels moored at every dock at the HOVENSA refinery at St. Croix, U.S. Virgin Islands. All persons aboard commercial tank or freight vessels moored at the docks must remain on board for the duration of the port call unless escorted by designated HOVENSA personnel or specifically permitted to disembark by the Captain of the Port San Juan. These security zones are needed for national security reasons to protect the public and port of HOVENSA from potential subversive acts.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, all persons aboard commercial tank and freight vessels moored at the docks must remain on board for the duration of the port call unless escorted by designated HOVENSA personnel or specifically authorized by the Captain of the Port San Juan, or a Coast Guard commissioned, warrant, or petty officer designated by him. In addition to publishing it in the **Federal Register**, the Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157.1 Mhz).

(c) *Dates.* This section becomes effective at 9 p.m. on September 15, 2001 and will terminate at 11:59 p.m. on October 15, 2001.

Dated: September 15, 2001.

J.A. Servidio,

Commander, U.S. Coast Guard, Captain of the Port.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–166]

RIN 2115–AA97

Safety Zone; Tomlinson Bridge, Quinnipiac River, New Haven, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Quinnipiac River within 100 yards of the north side and 500 yards of the south side of the Tomlinson Bridge. This safety zone will prevent marine traffic from transiting beneath the Tomlinson Bridge while a new, permanent lift span is installed on the bridge. The safety zone is needed to enable installation of a new lift span on the bridge and to protect marine traffic from the hazards associated with this operation.

DATES: This rule is effective from 7 a.m. (EST) on October 15, 2001 through 7 a.m. (EST) on October 20, 2001.

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 CGD01–01–166 and are available for inspection or copying at Coast Guard Group/Marine Safety Office Long Island Sound, Waterways Management Branch, 120 Woodward Avenue, New Haven, CT between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (junior grade) Pamela Garcia, Waterways Management Branch, Group/MSO Long Island Sound, telephone (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The safety

zone is being established to enable the installation of a new lift span on the Tomlinson Bridge. This operation is one of the final stages of a multi-year bridge reconstruction project. The timing of this phase is dependent upon a number of variables, including tidal conditions and ambient temperatures for curing concrete. Following the installation of the new lift span, portions of the navigable channel must be dredged and the temporary Tomlinson Bridge will be removed. Both of these operations are permitted to occur only between October 1 and January 31.

For these reasons, it was determined that the delay inherent in the NPRM process would be contrary to the public interest. Failure to complete installation of the new lift span will delay reopening the Tomlinson Bridge and prevent removal of the temporary bridge until October 2002. That delay would, in turn, result in significant additional construction costs and prolong the impediment to navigation represented by the presence of two adjacent bridges across the waterway.

Moreover, it was determined that the NPRM process would be unnecessary. The State of Connecticut met with known waterway users August 22, 2000 and July 10, 2001 to discuss the anticipated channel closure required for the lift span installation. Waterway users in attendance acknowledge the necessity of the channel closure and the ability to adjust their waterway use accordingly. The State has continued to communicate with waterway users to apprise them of the anticipated safety zone dates and has identified the effective dates of this temporary rule as those preferred by those affected.

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**. For the reasons stated above, we have determined that a delay in the effective dates of the temporary rule would be unnecessary and contrary to the public interest. Advance notice of the safety zone will be disseminated by notice to mariners.

Background and Purpose

The Coast Guard is establishing a safety zone on all waters of the Quinnipiac River within 100 yards of the north side and 500 yards of the south side of the Tomlinson Bridge, located in approximate position 41° 17'9" N, 072° 54'3" W. This safety zone is effective from 7 a.m. (EST) on October 15, 2001 to 7 a.m. (EST) on October 20, 2001. The safety zone will prevent waterway users from transiting through this portion of the Quinnipiac River

while the new Tomlinson Bridge lift span is transported by barge beneath the bridge and raised into position. The safety zone will enable construction personnel to complete this vital phase of a long-term bridge reconstruction project and protect mariners from the hazards associated with this operation.

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 Transportation (DOT) (44 FR 11040, February 26, 1979).

Recreational vessel traffic on the waterway is minimal during the period of the proposed safety zone. The State of Connecticut held several meetings in advance of the proposed channel closure to apprise known waterway users of the effective dates of the safety zone so that necessary, alternate arrangement could be made to avoid or mitigate any adverse consequences.

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. The proposed rule may affect the owners and operators of vessels intending to transit the boundaries of the safety zone during its effective dates. The rule will not have a substantial effect on small entities because it has been preceded by regular communication between the State of Connecticut and known waterway users regarding the need for and timing of the channel closure. Any entities that might be affected by the closure have had sufficient advance notice to make alternate arrangements.

Assistance for 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 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

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 affect 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph 34(g) of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation.

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.T01-166 to read as follows:

§ 165.T01-166 Safety Zone: Tomlinson Bridge, Quinnipiac River, New Haven Harbor, New Haven, CT.

(a) *Location.* The following area is designated as a safety zone: all waters of the Quinnipiac River within 100 yards of the north side and 500 yards of the south side of the Tomlinson Bridge,

located at approximate position 41° 17'9" N, 072° 54'3" W.

(b) *Enforcement period.* This section is effective from 7 a.m. (EST) October 15, 2001 to 7 a.m. (EST) October 20, 2001.

(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. 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.

Dated: September 20, 2001.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Group/MSO Long Island Sound.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900-AJ58

Board of Veterans' Appeals: Rules of Practice—Subpoenas

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: The Board of Veterans' Appeals (Board) adjudicates appeals from denials of claims for veterans' benefits filed with the Department of Veterans Affairs (VA). This document adopts as a final rule amendments to a Board Rule of Practice concerning subpoenas.

DATES: Effective date: October 29, 2001.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202-565-5978).

SUPPLEMENTARY INFORMATION: On February 15, 2000, VA published a proposed rule in the *Federal Register* (65 FR 7468), to clarify a Board Rule of Practice at 38 CFR 20.711 dealing with subpoena procedures in Board proceedings. The proposed changes relate to: (1) Where such a motion must be filed; (2) ruling on the motion; (3) service of a subpoena; (4) motions to quash or modify subpoenas; and (5) enforcing compliance with a subpoena.

Only two comments were received. A national veterans' service organization stated that it concurred in the proposed amendments. A representative of a group of attorneys engaged in the practice of veterans' law posed several objections.

The primary objection of this writer, occupying approximately half of his comments, is grounded in the misconception that these amendments remove authority from local VA offices to issue subpoenas in cases that are not before the Board. The Rule never gave that authority, nor do the amendments remove it.

The authority of field facility heads to issue subpoenas in matters within their jurisdiction is at 38 CFR 2.1(b). The Board's Rules of Practice deal only with procedures in matters that are before the Board and within its statutory jurisdiction. The Rule in question appears in a section of the Board's Rules entitled "Hearings on Appeal." Paragraph (a) of the Rule, which is not being amended, describes who may move for a subpoena under the rule as "the appellant, or his or her representative." (Emphasis added.) What is to be removed is a now obsolete procedure that once permitted VA field facility directors to decide motions for subpoenas in Board proceedings held at those facilities. Under 38 U.S.C. 7102(a) only members of the Board may make determinations on motions in Board proceedings.

The writer objects to the addition of certain quoted language to Rule 711(e) (38 CFR 20.711(e)) and urges that it be stricken. The language he quotes is being removed from paragraph (e), not added, as the proposed rule-making document explained. Thus this objection is also moot.

Next, the writer objects to language in proposed Rule 711(h) (which deals with motions to quash or modify a subpoena), stating that it "creates a mechanism for adversarial proceedings regarding the modification or attempts by the Agency to 'quash' subpoena requests." He maintains that this would be for the convenience of VA at the expense of veterans.

Motions to quash are not new. The procedure has been available through this Rule since 1992. (57 FR 4088, 4122) Permitting motions to quash subpoenas is standard practice throughout American jurisprudence. Such motions provide a mechanism for resolving disputes between persons seeking subpoenas and persons subpoenaed and has nothing to do with agency convenience, or the lack of it.

The amendments in fact aid veterans and their representatives, who are

usually the persons seeking subpoenas as a means of obtaining evidence to present to the Board. The amendments provide a way for them to get relief when the person who has evidence makes unreasonable demands regarding its release. The proposed rule-making document gives the example of unreasonable demands for reimbursement for costs involved in honoring a subpoena duces tecum to obtain physical evidence, typically documents. The writer further implies that this amendment is purposefully designed to impede access to documents held by VA. That is simply not the case. VA itself is seldom the subject of a subpoena in a Board proceeding because there are other methods for readily obtaining VA records. See 38 U.S.C. 5701(b) and 5 U.S.C. 552.

The proposed rule is adopted without changes.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: September 20, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, amend 38 CFR part 20 as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

- 2. Section 20.711 is amended by:
 - (a) Revising paragraphs (c) and (e);
 - (b) Revising the second sentence of paragraph (f);
 - (c) Revising the first sentence of paragraph (g);
 - (d) Revising paragraph (h); and
 - (e) Adding paragraph (i).

The revisions and addition read as follows:

§ 20.711 Rule 711. Subpoenas.

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