

## 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 (32)(e), of Commandant Instruction M16475.1d, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 117

Bridges.

## Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From September 13, 2002 through October 15, 2002, section 117.739 is temporarily amended by suspending paragraph (k) and adding a new paragraph (q) to read as follows:

#### § 117.739 Passaic River.

\* \* \* \* \*

(q) The draw of the Route 7 (Rutgers Street) Bridge, mile 8.9, need not open for the passage of vessel traffic from September 13, 2002 through October 15, 2002.

Dated: September 9, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander,  
First Coast Guard District.

[FR Doc. 02-23479 Filed 9-13-02; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP Pittsburgh-02-019]

RIN 2115-AA97

#### Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, WV

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone encompassing all water extending 200 feet from the water's edge of the left descending bank on the Ohio River, beginning from mile marker 119.0 and ending at mile marker 119.8. This security zone is necessary to protect Pittsburgh Plate Glass Industries (PPG), persons, and vessels from subversive or terrorist acts. Entry of persons or vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or designated representative.

**DATES:** This rule is effective from 3 p.m. on August 30, 2002 to 3 p.m. on February 15, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP Pittsburgh-02-019] and are available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave., Pittsburgh, PA between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. **FOR FURTHER INFORMATION CONTACT:** Petty Officer Michael Marsula, Marine Safety Office Pittsburgh at (412) 644-5808 x114.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

National security and intelligence officials warn that future terrorist attacks against United States interests

are likely. Current advisories of terrorist threats, a history of violence directed towards this facility, and the nature of material handled at Pittsburgh Plate Glass Industries (PPG) make this rulemaking necessary for the protection of national security interests. Any delay in making this regulation effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

The Coast Guard will, during the effective period of this temporary final rule, complete notice and comment rulemaking for a proposed permanent regulation.

##### Background and Purpose

A temporary security zone for this area expired on June 15, 2002 (67 FR 9589, March 4, 2002). We received no comments or objections regarding this zone. Advisories regarding continued threats of terrorism have revealed the need for another security zone to protect PPG, persons, and vessels from subversive or terrorist acts. To enhance security the Captain of the Port is establishing a temporary security zone.

This security zone includes all water extending 200 feet from the water's edge of the left descending bank on the Ohio River beginning from mile marker 119.0 and ending at mile marker 119.8. All persons and vessels are prohibited from entering the zone without the permission of the Captain of the Port Pittsburgh or designated representative.

##### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule does not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone. Vessels may be permitted to enter the security zone on a case-by-case basis.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a

substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard is unaware of any small entities that would be impacted by this rule. The navigable channel remains open to all vessel traffic. We received no comments or objections regarding the previous security zone covering the same area.

If you are a small business entity and are significantly affected by this regulation please contact Petty Officer Michael Marsula, U.S. Coast Guard Marine Safety Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave., Pittsburgh, PA at (412) 644-5808 x114.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 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 M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available 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.

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.

2. A new temporary § 165.T08-100 is added to read as follows:

#### § 165.T08-100 Security Zone; Ohio River Miles 119.0 to 119.8, Natrium, West Virginia.

(a) *Location.* The following area is a security zone: the waters of the Ohio River, extending 200 feet from the water's edge of the left descending bank beginning from mile marker 119.0 and ending at mile marker 119.8.

(b) *Effective period.* This section is effective from 3 p.m. on August 30, 2002 through 3 p.m. on February 15, 2003.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or designated representative.

(2) Persons or vessels desiring to transit the area of the security zone may contact the Captain of the Port Pittsburgh at telephone number 412-644-5808 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Pittsburgh or designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: August 30, 2002.

**S.L. Hudson,**

*Commander, Coast Guard, Captain of the Port, Pittsburgh.*

[FR Doc. 02-23478 Filed 9-13-02; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP San Diego 02-017]

RIN 2115-AA97

#### Security Zone; Naval Base San Diego, San Diego Bay, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Base, San Diego, California (33 CFR 165.1101), extending it by approximately 80 feet seaward of the pier heads at the request of the U.S. Navy. The additional size will accommodate the Navy's placement of an anti-small boat barrier boom perpendicular to the piers. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

**DATES:** This rule is effective from 12:01 a.m. on September 11, 2002 to 11:59 p.m. on February 11, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP San Diego 02-017 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego at (619) 683-6495.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has

recently emphasized the need for the expanded use of an anti-small boat barrier boom around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its web site has described the current nationwide threat level as "Elevated." According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM for this temporary rule and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any permanent rule.

##### Background and Purpose

The Coast Guard is expanding the security zone (33 CFR 165.1101) by temporarily extending it approximately 80 feet seaward of the pier heads to allow the U.S. Navy to deploy an anti-small boat barrier boom perpendicular to the piers. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. It will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base San Diego and it will protect transiting recreational

and commercial vessels and their respective crews from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port or Commander, Navy Region Southwest. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: Seizure and forfeiture of the vessel, a monetary penalty of not more than \$250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

##### Regulatory Evaluation

This temporary final 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).

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat boom while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Base. Any hardships experienced by persons or vessels wishing to approach the Naval Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this rule would