

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 analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

#### § 117.101 [Amended]

■ 2. In § 117.101, paragraph (c) is removed and paragraph (d) is redesignated paragraph (c).

Dated: January 28, 2004.

**J.W. Stark,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD13-03-025]

RIN 1625-AA00

#### Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is revising the effective period for temporary safety zones during the tow and moor operations of the caissons being used for the Tacoma Narrows Bridge construction project. The Coast Guard is taking this action to safeguard the public from hazards associated with the transport and construction of the caissons being used to construct piers for the new bridge. These safety hazards include, but are not limited to, hazards to navigation, allisions with the caissons, allisions with the caisson mooring system, and collisions with work vessels and barges. Entry into these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

**DATES:** This rule is effective from February 6, 2004 through August 6, 2004.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG. Tyana Thayer c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217-6222.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On 13 August 2003, we published a temporary final rule for Tacoma Narrows Bridge entitled "Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project" in **Federal Register** (68 FR 48282) under section 165.T13-016. This temporary final rule extends the effective period until 6 August 2004.

We did not publish a notice of proposed rulemaking (NPRM) for this

regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. On January 13, 2004, the State of Washington Department of Transportation (WADOT) informed the Coast Guard that the contractors involved in the new Tacoma Narrows Bridge construction project had fallen behind schedule and requested an extension. Accordingly, the dangers that exist because of this bridge construction will continue to exist after February 6, 2004. The Coast Guard continues to receive reports of boaters navigating too close to the construction zone and reports of scuba divers diving near the caissons necessitate extending the effective period of this safety zone. If normal notice and comment procedures were followed, this rule would not become effective in sufficient time. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

#### Background and Purpose

As of today, the need for a safety zone still exists. The Coast Guard is extending the temporary safety zone regulation on the Tacoma Narrows and adjoining waters, for the Tacoma Narrows Bridge Project through August 6, 2004. The Coast Guard has determined it is necessary to limit access to a 250-yard radius around each of the two new bridge piers. Caissons are being used to build the new bridge piers. The new bridge piers are located just north of the existing Tacoma Narrows Bridge. The dangers to persons and vessels transiting this area includes, but is not limited to, hazards to navigation, allisions with the caissons, allisions with the caisson mooring system, and collisions with work vessels and barges. The Coast Guard, through this action, intends to promote the safety of persons and vessels in the area. Entry into these zones will be prohibited unless authorized by the Captain of the Port. Coast Guard personnel will enforce these safety zones. The Captain of the Port may be assisted by other Federal, state, or local agencies.

#### 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 Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass a small area that should not impact commercial or recreational traffic. The Coast Guard does not anticipate any significant economic impact.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of the Tacoma Narrows when this rule is in effect. The zone will not have a significant economic impact due to its short duration and small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

#### Taking of Private Property

This rule does 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this rule to accommodate the special needs of mariners in the vicinity of the bridge construction, and the Coast Guard's commitment to working with the Tribes, we have determined that safety in the vicinity of the bridge construction project and fishing rights protection need not be incompatible and therefore have determined that 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

The Coast Guard's preliminary review indicates this rule is categorically excluded from further environmental documentation under figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination are available in the docket for inspection and copying where indicated under **ADDRESSES**. All standard environmental measures remain in effect.

#### List of Subjects in 33 CFR Part 165

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

■ For the reasons set out in the preamble, the Coast Guard amends Part 165 of Title

33, Code of Federal Regulations, 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From February 6, 2004 until August 6, 2004, temporary § 165.T13–016 is reinstated and revised to read as follows:

#### § 165.T13–016 Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project.

(a) *Location.* The following areas are safety zones: All waters of the Tacoma Narrows, Puget Sound, and adjoining waters of Washington State, within a 250 yard radius around each of the following coordinates (which are the approximate center points of the two new bridge piers): (1) 47 degrees, 15 minutes, 54.08 seconds North; 122 degrees, 32 minutes, 49.65 seconds West; and (2) 47 degrees, 16 minutes, 15.07 seconds North; 122 degrees, 33 minutes, 15.95 seconds West [Datum: NAD 1983].

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, this Temporary Final Rule applies to any person or vessel in the navigable waters of the United States. No person or vessel may enter or remain in the above safety zones, unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

(c) *Effective dates.* This section is effective from February 6, 2004 until August 6, 2004.

Dated: January 26, 2004.

**Danny Ellis,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD05–04–015]

RIN 1625–AA00

#### Safety Zone; Delaware River

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone encompassing the Delaware River between the Tacony-Palmyra Bridge and Trenton Falls, Trenton, New Jersey. This safety zone is necessary to provide for the safety of life and property and to facilitate commerce. This safety zone limits transits to steel hulled vessels transiting only during daylight hours due to the hazards created by the ice.

**DATES:** This rule is effective from January 23, 2004 to March 15, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–015 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

#### 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) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners against the hazards associated with ice conditions on the Delaware River. Record cold temperatures causing ice to form at a greater than normal rate made it impracticable and dangerous to mariners to delay publishing this safety zone.

##### Background and Purpose

During a moderate or severe winter, frozen waterways present numerous hazards to vessels. Ice in a waterway

may hamper a vessel's ability to maneuver, and could cause visual aids to navigation to be submerged, destroyed or moved off station. Ice abrasions and ice pressure could also compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach.

When ice conditions develop to a point where vessel operations become unsafe, it becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. Captains of the Port have the authority (33 CFR part 160, subpart B) to restrict and manage vessel movement by implementing a safety zone. The Captain of the Port Philadelphia is establishing a safety zone on the Delaware River that will restrict access through the safety zone to only those vessels with steel hulls and allow for daylight only transits for all vessels through the safety zone during Ice Condition Two.

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards due to ice conditions that become a threat to navigation. This rule establishes a safety zone encompassing the Delaware River between the Tacony-Palmyra Bridge and Trenton Falls, Trenton, New Jersey.

##### Discussion of Temporary Final Rule

This rule limits access to the safety zone to only those vessels authorized to enter and operate safely within the zone. Vessels not meeting the operating requirements established by this temporary rule will not be allowed to enter the safety zone. During an emergency situation, a vessel not meeting the operating requirements may obtain permission from the Captain of the Port Philadelphia prior to entering the safety zone during the effective periods. The Captain of the Port will notify the maritime community, via marine broadcasts, of the current ice conditions and the restrictions imposed under those conditions.

Ice condition Three is the readiness condition in which weather conditions are favorable for the formation of ice in the navigable waters of the Delaware River/Bay C&D Canal. Daily reports for the Coast Guard Stations and commercial vessels are monitored.

Ice Condition Two is the alert condition in which ice begins to form in the upper Delaware River/Bay and C&D Canal. The Captain of the Port Philadelphia may impose shaft horsepower and hull type restrictions.

Ice Condition One is the emergency condition in which ice has largely covered the upper Delaware River/Bay