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**Vincent K. Snowbarger,**

*Deputy Director, Pension Benefit Guaranty Corporation.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG-2008-0169]

RIN 1625-AA-09

#### **Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Wrightsville Beach; Cape Fear and Northeast Cape Fear Rivers, Both in Wilmington, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Temporary Deviation from Regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of three North Carolina Department of Transportation (NCDOT) drawbridges: The S.R. 74 Bridge, across the Atlantic Intracoastal Waterway mile 283.1 at Wrightsville Beach, NC; the Cape Fear River Memorial Bridge at mile 26.8, and the Isabel S. Holmes Bridge, at mile 1.0, across Northeast Cape Fear River both in Wilmington, NC, to accommodate distance races.

**DATES:** This deviation is effective from 7 a.m. to 11:59 p.m. on November 1, 2008.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6629. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6629.

**SUPPLEMENTARY INFORMATION:** The S.R. 74 Bridge across the Atlantic Intracoastal Waterway (AIWW) mile 283.1 at Wrightsville Beach, a lift drawbridge, has a vertical clearance in the closed position to vessels of 20 feet, above mean high water (MHW). The

Cape Fear River Memorial Bridge, a vertical lift drawbridge, has vertical clearances in full open and closed positions to vessels of 135 feet and 65 feet above MHW, respectively. The Isabel S. Holmes Bridge, at mile 1.0, across Northeast Cape Fear River, a lift drawbridge, has a vertical clearance in the closed position to vessels of 40 feet above MHW.

The Wilmington Family YMCA on behalf of the NCDOT (the bridge owner) requested a temporary deviation from the current operating regulations of the aforementioned bridges set out in 33 CFR 117.821(a)(5), 33 CFR 117.823 and 33 CFR 117.829(a), respectively, to accommodate "The Carolinian" Iron and Half-Iron distance races scheduled for Saturday, November 1, 2008.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notices to Mariners of the closure periods for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

To facilitate the races, the drawbridges will be maintained in the closed-to-navigation position on November 1, 2008, at the following times: From 7 a.m. to 10 a.m. for the S.R. 74 Bridge; from 11 a.m. to 11:59 p.m. for the Cape Fear River Memorial Bridge; and from 8 a.m. to 11:59 p.m. for the Isabel S. Holmes Bridge.

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

We analyzed this temporary deviation 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). The environmental impact that this temporary deviation will have is minimal because holding the drawbridges in the closed position for a limited period, for a public function, will not result in a change in functional use, or an impact on a historically significant element or setting.

Dated: March 5, 2008.

**Waverly W. Gregory, Jr.,**

*Chief, Bridge Administration, Branch, Fifth Coast Guard District.*

[FR Doc. E8-5127 Filed 3-13-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[USCG-2008-0061]

RIN 1625-AA11

#### **Regulated Navigation Areas: Cape Fear River, Wilmington, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) on the waters of the Cape Fear River, Wilmington, NC. This action is necessary to minimize the potential risk of allision to the USS NORTH CAROLINA, a United States Navy submarine, while moored at the North Carolina State Port, Wilmington, NC. This rule will enhance the safety of vessels transiting this area of the Cape Fear River during the period of reduced horizontal clearance.

**DATES:** This rule is effective from 8 a.m. on April 25, 2008, through 8 p.m. on May 7, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0061 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning this rule, phone CWO4 Stephen Lyons, Waterways Management Division Chief, Sector North Carolina, at (252) 247-4525.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The USS NORTH CAROLINA will be moored in the Cape Fear River, Wilmington, North Carolina for an official United States Navy commissioning ceremony. As the ceremony is a military function within the meaning of 5 U.S.C. 553(a)(1), the Coast Guard will not conduct a notice and comment period for this temporary final rule.

## Background and Purpose

The USS NORTH CAROLINA, a United States Navy submarine, will be moored at the port in Wilmington, North Carolina Cape Fear River, in preparation for the Navy's commissioning ceremony of the submarine. This rule provides for the safety and security of a U.S. Navy submarine and vessels transiting past it while it is moored in close proximity to the shipping channel at the North Carolina State Port, Wilmington, NC. This action is necessary to protect the USS NORTH CAROLINA and prevent vessels 300 gross tons or more and all tugs and tows with a combined tonnage of 300 gross tons or more from alliding with the submarine due to a loss of steering or propulsion, other mechanical failure, or human error.

## Discussion of Rule

The RNA will encompass the waters of the Cape Fear River from 1 nautical mile south of the North Carolina State Port, Wilmington, NC, to 1 nautical mile north of the North Carolina State Port, Wilmington, NC. Each operator of a vessel of 300 gross tons or more or a tug and tow with a combined tonnage of 300 gross tons or more that intends to enter the RNA shall:

- (i) Ensure they have sufficient propulsion and directional control to safely navigate the RNA under prevailing conditions,
- (ii) Make the necessary arrangements and be escorted through the RNA by a tug with sufficient horsepower to arrest and control their vessel or tug and tow in the event of a steering, propulsion, or other casualty,
- (iii) Ensure they do not meet or overtake any other vessel of 300 gross tons or more or a tug and tow with a combined tonnage of 300 gross tons or more in the RNA, and
- (iv) Obtain authorization from the Captain of the Port, Cape Fear River. To seek permission to transit the area, the Captain of the Port, Cape Fear River can be contacted via Sector North Carolina at telephone number (252) 247-4570. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Cape Fear River and proceed at the minimum speed necessary to maintain a safe course while transiting the RNA.

The Captain of the Port, Cape Fear River by the direction of the District Commander, may grant waivers upon request, and authorize a deviation from any part of this regulation if it is found that the proposed operation can be done safely. A request for a wavier and or deviation must be submitted in writing

and received not less than 24 hours before the intended operation and must state specifically why this action is necessary.

## 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. The limited amount of time this RNA will be in place and the need to protect the public while the USS NORTH CAROLINA is moored in the Cape Fear River prompts the Coast Guard to promulgate this temporary final rule.

## 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 would not have a significant economic impact on a substantial number of small entities.

The Coast Guard expects the economic impact of this rule to be minimal. Although this regulation will restrict movement in the regulated area, the effect of this rule will not be significant because: (i) The regulated navigation area will be in effect for a limited duration of time and (ii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

## Collection of Information

This rule would call 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

This rule would 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 would 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed 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 34(g) of the Instruction from further environmental documentation. A final "Environmental Analysis Checklist" and a final

"Categorical Exclusion Determination" are 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.

#### Regulatory Text

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 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. Add temporary § 165.T05-007 to read as follows:

#### § 165.T05-007 Regulated Navigation Area; Cape Fear River, Wilmington North Carolina

(a) *Definitions.* For the purposes of enforcing the temporary RNA for the location identified in paragraph (b) of this section, a *Designated Representative* means a Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP Cape Fear River to act on his behalf.

(b) *Location.* The following area is a regulated navigation area: Waters of the Cape Fear River, from surface to bottom, encompassed by latitude 34° 10'N thence north to the Cape Fear Memorial Bridge.

(c) *Regulations.* (1) The general regulations governing regulated navigation areas found in § 165.13 of this part apply to the regulated navigation area described in paragraph (b) of this section.

(2) All persons are required to comply with the general regulations governing this regulated navigation area (RNA).

(3) This rule provides for the safety of a U.S. Navy submarine and vessels transiting past it while it is moored in close proximity to the shipping channel at the North Carolina State Port, Wilmington, NC. This action is necessary to protect the USS NORTH CAROLINA and prevent vessels 300 gross tons or more and all tugs and tows with a combined tonnage of 300 gross tons or more from alliding with the submarine due to a loss of steering or propulsion, other mechanical failure, or human error.

(4) The RNA will encompass the waters of the Cape Fear River from 1

nautical mile south of the North Carolina State Port, Wilmington NC to 1 nautical mile north of the North Carolina State Port, Wilmington, NC. Each operator of a vessel of 300 gross tons or more or a tug and tow with a combined tonnage of 300 gross tons or more that intends to enter the RNA shall:

(i) Ensure that they have sufficient propulsion and directional control to safely navigate the RNA under prevailing conditions,

(ii) Make the necessary arrangements and be escorted through the RNA by a tug with sufficient horsepower to arrest and control their vessel or tug and tow in the event of a steering, propulsion, or other casualty,

(iii) Ensure they do not meet or overtake any other vessel of 300 gross tons or more or a tug and tow with a combined tonnage of 300 gross tons or more in the RNA, and

(iv) Obtain authorization from the Captain of the Port, Cape Fear River. To seek permission to transit the area, the Captain of the Port, Cape Fear River can be contacted via Sector North Carolina at telephone number (252) 247-4570. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Cape Fear River and proceed at the minimum speed necessary to maintain a safe course while transiting the RNA.

(5) The Captain of the Port, Cape Fear River by the direction of the District Commander, may grant waivers upon request, and authorize a deviation from any part of this regulation if it is found that the proposed operation can be done safely. A request for a wavier and or deviation must be submitted in writing and received not less than 24 hours before the intended operation and must state specifically why this action is necessary.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 a.m. on April 25, 2008 through 8 p.m. May 7, 2008.

Dated: February 20, 2008.

**F.M. Rosa,**

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

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