

Signed at Washington, DC, on November 8, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0995]

RIN 1625-AA00

#### Safety Zone; Beaufort River/Atlantic Intracoastal Waterway, Beaufort, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the Beaufort River portion of the Atlantic Intracoastal Waterway, South Carolina during the construction and expansion of the J.E. McTeer Bridge, also referred to as the S.C. 802 Bridge. This regulation is necessary to protect life and property on the navigable waters of the Beaufort River during the construction and expansion of the J.E. McTeer Bridge. Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 13, 2010. The Coast Guard anticipates that this proposed rule will be effective from January 24, 2011 through January 28, 2011 and enforced daily from 9 a.m. until 12 p.m. and 2 p.m. until 5 p.m. on January 24, 2011 through January 28, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0995 using any one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* 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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Lieutenant Julie Blanchfield, Coast Guard; telephone 843-740-3184, e-mail [Julie.E.Blanchfield@uscg.mil](mailto:Julie.E.Blanchfield@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2010-0995), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2010-0995" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or

hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2010-0995" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### **Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

The construction and expansion of the J.E. McTeer Bridge will create safety hazards within the main channel of the Beaufort River in the vicinity of the J.E. McTeer Bridge due to the presence of construction equipment and the nature of the construction project. The described portion of the Atlantic Intracoastal Waterway/Beaufort River will be affected daily from 9 a.m. until

12 p.m. and 2 p.m. until 5 p.m. on January 24, 2011 through January 28, 2011. The safety zone is necessary to protect the public from the hazards associated with the construction of the J.E. McTeer Bridge and related activities.

### Discussion of Proposed Rule

The proposed rule would designate a temporary safety zone on the Beaufort River in the vicinity of the J.E. McTeer Bridge in Beaufort, South Carolina, which connects Lady's Island to Port Royal Island. The temporary safety zone will be enforced daily from 9 a.m. until 12 p.m. and 2 p.m. until 5 p.m. on January 24, 2011 through January 28, 2011. Persons and vessels may not enter, transit through, anchor in, or remain within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels may request permission to enter, transit through, anchor in, or remain within the safety zone by contacting a designated representative on VHF-FM Channel 16 or via telephone at 843-740-7050.

### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### Regulatory Planning and Review

This proposed 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.

We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation is unnecessary. This proposed rule may have some impact on the public, but these potential impacts will be minimal for the following reasons: (1) Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone for a total of six hours each day for five consecutive days; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they will be able to operate in the surrounding area during the effective period; (3) vessels may still enter, transit through, anchor in, or

remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (4) advance notification will be made to the local maritime community via broadcast notice to mariners.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: (1) The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Beaufort River encompassed within the safety zone; and (2) the owner and operator of the Lady's Island Marina, which is located adjacent to the J.E. McTeer Bridge.

This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: (1) Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone for a total of six hours each day for five consecutive days; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they will be able to operate in the surrounding area during the effective period; (3) vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (4) advance notification will be made to the local maritime community via broadcast notice to mariners and marine safety information bulletins.

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 proposed rule so that they 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 Julie Blanchfield at 843-740-3184. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### Collection of Information

This proposed 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 proposed 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 proposed 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 proposed rule would not cause 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 proposed 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 proposed 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 proposed 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 proposed 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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone on the Beaufort River in Beaufort, South Carolina, which is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### 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 proposes to amend 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-0995 to read as follows:

#### § 165.T07-0995 Safety Zone; Beaufort River/Atlantic Intracoastal Waterway, Beaufort, SC.

(a) *Regulated Area.* The following regulated area is a safety zone: All waters of the Beaufort River in Beaufort, South Carolina encompassed within an imaginary line connecting the following points: starting at Point 1 in position 32°23' 44.92" N, 80°40'31.43" W; thence south to Point 2 in position 32°23'30.92" N, 80°40'30.75" W; thence east to Point 3 in position 32°23'30.15" N, 80°40'12.93" W; thence north to Point 4 in position 32°23'44.22" N, 80°40'18.68" W; thence west to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843-740-7050, or a designated representative via VHF radio on channel 16 to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such permission must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Effective Date.* The rule is effective daily from 9 a.m. until 12 p.m. and 2 p.m. until 5 p.m. on January 24, 2011 through January 28, 2011.

Dated: November 4, 2010.

**Michael F. White, Jr.,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 49

[EPA-R09-OAR-2010-0683; FRL-9225-1]

#### Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant: Navajo Nation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public hearings.

**SUMMARY:** On October 6, 2010, the Environmental Protection Agency (EPA)