

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2011–1115]

RIN 1625–AA00

#### Safety Zone; Matlacha Bridge Construction, Matlacha Pass, Matlacha, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of Matlacha Pass in the vicinity of the Matlacha Bridge in Matlacha, Florida. The safety zone will be enforced during construction of the Matlacha Bridge from Thursday, December 15, 2011 until Sunday, January 15, 2012. The safety zone is necessary to protect life and property on navigable waters of the United States during the Matlacha Bridge construction. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

**DATES:** This rule is effective in the CFR on January 12, 2012 until 7 p.m. January 15, 2012. This rule is effective with actual notice for purposes of enforcement from 7 a.m. December 15, 2011, until 7 p.m. January 15, 2012.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1115 and are available online by going to <http://www.regulations.gov>, inserting USCG–2011–1115 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Marine Science Technician Second Class Chad R. Griffiths, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email [D07-SMB-Tampa-WWM@uscg.mil](mailto:D07-SMB-Tampa-WWM@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of this stage of the Matlacha Bridge construction until November 18, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to construction operations to install supports for the new bascule leaf on the Matlacha Bridge. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the bridge construction.

For the same reason discussed above, 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**.

#### Basis and Purpose

The legal basis for the rule is the Coast Guard’s authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect life and property on navigable waters of the United States during the Matlacha Bridge construction.

#### Discussion of Rule

From Thursday, December 15, 2011 until Sunday, January 15, 2012, Archer Western Contractors, Ltd., Inc. will be installing a new fender system on the Matlacha Bridge in Matlacha, Florida. The fender installation will require a barge to be placed between the fender system at the Matlacha Bridge, thereby closing the Matlacha Pass channel to marine traffic. The construction poses a danger to mariners located in or transiting the area.

The safety zone encompasses certain waters of Matlacha Pass in the vicinity

of the Matlacha Bridge in Matlacha, Florida. The safety zone will be enforced daily from 7 a.m. until 7 p.m. from December 15, 2011 until January 15, 2012.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

#### Regulatory Analyses

We developed this 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

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for 12 hours per day; (2) vessel traffic in the area is expected to be minimal during the enforcement

periods; (3) the barge placed in the main channel will be able to move with a 12 hour advance notice; (4) 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 St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement periods; (5) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement periods if authorized by the Captain of the Port St. Petersburg or a designated representative; and (6) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

#### *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. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Matlacha Pass encompassed within the safety zone between 7 a.m. and 7 p.m. from December 15, 2011 until January 15, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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

#### **Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced 12 hours per day during a 30 day period. An environmental analysis checklist and a 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.

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; 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.T07–1115 to read as follows:

#### § 165.T07–1115 Safety Zone; Matlacha Bridge Construction, Matlacha Pass, Matlacha, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of Matlacha Pass within a 100 yard radius of position 26°37'57.6" N, 82°04'04.8" W. 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 St. Petersburg 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 St. Petersburg 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 St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port St. Petersburg or

a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement.* This rule is enforced daily from 7 a.m. until 7 p.m. from December 15, 2011, until January 15, 2012.

Dated: December 12, 2011.

**S.L. Dickinson,**

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

[FR Doc. 2012–403 Filed 1–11–12; 8:45 am]

**BILLING CODE 9110–04–P**

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 21

#### RIN 2900–AO10

#### Vocational Rehabilitation and Employment Program—Changes to Subsistence Allowance

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

**SUMMARY:** This document adopts as final, without change, the interim final rule amending regulations of the Department of Veterans Affairs (VA) to reflect changes made by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, effective August 1, 2011, that affect payment of vocational rehabilitation benefits for certain service-disabled veterans. Pursuant to these changes, a veteran, who is eligible for a subsistence allowance under chapter 31 of title 38, United States Code, and educational assistance under chapter 33 of title 38, United States Code, may participate in a rehabilitation program under chapter 31 and elect to receive a payment equal in amount to an applicable military housing allowance payable under title 37, United States Code, instead of the regular subsistence allowance under chapter 31. In addition, payments of subsistence allowances during periods between school terms are discontinued, and payments during periods of temporary school closings are modified.

**DATES:** *Effective Date:* This final rule is effective January 12, 2012.

**FOR FURTHER INFORMATION CONTACT:** Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans

Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–9600 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In an interim final rule published in the **Federal Register** on August 1, 2011 (76 FR 45697), VA amended §§ 21.260 and 21.264 to allow a veteran who is eligible for a chapter 31 subsistence allowance and chapter 33 educational assistance to participate in a chapter 31 rehabilitation program and elect a subsistence allowance in an alternate amount, which we referred to as the *Post-9/11 subsistence allowance*, in lieu of the amount of the regular chapter 31 subsistence allowance provided for in § 21.260(b). Among other things, we also amended § 21.270 to discontinue the payment of subsistence allowance for periods between school terms.

We provided a 30-day comment period that ended August 31, 2011. No comments were received. Based on the rationale set forth in the interim final rule, we adopt the interim final rule as a final rule without change.

#### Administrative Procedure Act

This document affirms the amendments made by the interim final rule that is already in effect. The Secretary of Veterans Affairs concluded that, under 5 U.S.C. 553(b)(3)(B) and (d)(3), there was good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish the interim final rule with an immediate effective date. The Secretary found that it was impracticable and contrary to the public interest to delay this regulation for the purpose of soliciting prior public comment. Sections 205 and 206 of Public Law 111–377 required that certain changes to the rehabilitation program take effect on August 1, 2011. This interim final rule was necessary to implement by August 1, 2011, the statutory changes as they related to chapter 31 subsistence allowance. For instance, Public Law 111–377 did not address how the alternate rate of subsistence allowance would be calculated in different situations. Allowing veterans to elect an alternate rate of subsistence allowance ensured that such veterans would receive the supportive services under chapter 31 to assist them in the transition from military to civilian careers. Because eligible veterans could begin to make the election on August 1, 2011, it was important to have procedures in place by this date to allow veterans to receive the alternate rate of subsistence allowance authorized under the law as