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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0426]

RIN 1625–AA00

Safety Zone: Gilmerton Bridge Center Span Float-in, Elizabeth River; Norfolk, Portsmouth, and Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Interim Temporary Final Rule.

SUMMARY: The Coast Guard will establish a temporary safety zone on the navigable waters of the Elizabeth River in Norfolk, Portsmouth, and Chesapeake, VA. This action is necessary to provide for the safety of life on navigable waters during the Gilmerton Bridge Center Span Float-in and bridge construction of span placement. This action is intended to restrict vessel traffic movement to protect mariners from the hazards associated with the float-in and span placement.

DATES: This rule will be effective from January 7, 2013 through January 16, 2013. The rule is scheduled to be enforced from 6:00 a.m. on January 7, 2013 through January 11, 2013, with inclement weather dates of January 12, 2013 through January 16, 2013. Comments and related material must be received by the Coast Guard on or before December 26, 2012.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:


(2) Fax: 202–493–2251.

(3) Mail or Delivery: 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0642 and are available online by going to http://www.regulations.gov, inserting USCG–2012–0642 in the “Search” 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 rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email Hector.L.Cintron@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, 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 at 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, 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 email 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, type the docket number (USCG–2012–0426) in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8 1⁄2 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.

2. 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, type the docket number (USCG–2012–0426) in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. 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.

3. 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 docket in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the 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.

B. Regulatory History and Information

On July 25, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) proposing a safety zone in the Gilmerton Bridge Area (77 FR 43557) on September 5–9, 2012. We received no comments on the proposed rule.

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. Because of shifting construction schedules, the Coast Guard was unable to determine the precise date of the construction until recently. Therefore, waiting for a 30 day notice period to run would have been impracticable.

C. Basis and Purpose

On January 7, 2013 through January 11, 2013, with inclement weather dates of January 12, 2013 through January 16, 2013, PCL Civil Construction, Inc. will facilitate removal of the existing bascule spans from the Gilmerton Bridge, transport of the new center span from the Eastern Branch of the Elizabeth River at the Campostella Bridge to the Southern Branch of the Elizabeth River at the Gilmerton Bridge in Norfolk, Portsmouth, and Chesapeake, VA and the placement of the center span at the Gilmerton Bridge in Chesapeake, VA. There is a danger of falling debris during the removal of the existing structures and installation of the new bridge span. Due to the need to protect mariners and the public transiting the Elizabeth River from hazards associated with the span move and construction of span placement, the Coast Guard has determined that a moving safety zone and an extended waterway closure at the Gilmerton Bridge is necessary for public safety purposes.

D. Discussion of Final Rule

The Captain of the Port Hampton Roads is establishing a temporary moving safety zone around the Gilmerton Bridge center span barge, restricting vessels operating in the navigable waters on the Elizabeth River from the Campostella Bridge located in the Eastern Branch of the Elizabeth River to the Gilmerton Bridge. The purpose of this rule is to protect mariners and the public transiting the Elizabeth River from hazards associated with the span move, construction and placement. This movement is scheduled to begin at 6 a.m. on January 7, 2013, weather permitting. Because of the size of the barge and the width of the waterway, vessels will not be able to transit around the barge, necessitating closure of the entire waterway from the Campostella Bridge to the Gilmerton Bridge. Transit is expected to take approximately seven hours. This action is necessary to ensure the safety of PCL Construction and vessels immediately prior to, during, and following the transit of the span.

In addition to the moving safety zone, the Coast Guard will establish a temporary safety zone and extended waterway closure at the Gilmerton Bridge starting at 6 a.m. on January 7, 2013, weather permitting, until January 11, 2013. This safety zone will be established in the interest of public safety during span placement at the Gilmerton Bridge. The inclement weather dates are January 8, 2013 through January 12, 2013. This temporary safety zone will encompass the waters directly under and 200 feet on either side of the Gilmerton Bridge, crossing the Elizabeth River. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone during the time frame listed. Coast Guard Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event.

While this construction was originally scheduled to commence in September, 2012, construction has been delayed due to scheduling concerns and other logistical issues. For these reasons, the effective date in this final rule has been rescheduled to January 7, 2013.

E. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the moving safety zone accompanying the Gilmerton Bridge Span Barge and the safety zone at the Gilmerton Bridge beginning at 6 a.m. on January 3, 2013 through January 7, 2013 with inclement weather dates of January 8, 2013 through January 12, 2013. Although these regulations prevent traffic from transiting a portion of the Elizabeth River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. This regulation is designed to ensure such transit is conducted in a safe and orderly fashion.

2. Impact Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. 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 will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or anchor in portions of the Elizabeth River, in Virginia. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: The restrictions are limited in duration, it affects only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas.

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.

3. Assistance for Small Entities

Under section 213(a) of the Small
Business Regulatory Enforcement
Fairness Act of 1996 (Public Law 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 LCDR Hector
Cintron, Waterways Management
Division Chief, Sector Hampton Roads,
Coast Guard; telephone 757–668–5581,
email Hector.L.Cintron@uscg.mil. The
Coast Guard will not retaliate against
small entities that question or complain
about this temporary rule or any policy
or action of the Coast Guard.

4. Collection of Information

This rule will call for no new
collection of information under the
Paperwork Reduction Act of 1995 (44

5. Federalism

A rule has implications for federalism
under Executive Order 13132,
Federalism, if it has a substantial direct
impact 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.

6. Protest Activities

The Coast Guard respects the First
Amendment rights of protesters.
Protesters are asked to contact the
person listed in the FOR FURTHER
INFORMATION CONTACT section to
coordinate protest activities so that your
message can be received without
jeopardizing the safety or security of
people, places or vessels.

7. 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 (adjusted for inflation) 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.

8. Taking of Private Property

This rule will 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.

9. Civil Justice Reform

This rule meets applicable standards
in sections 3(a) and 3(b)(2) of Executive
Order 12998, Civil Justice Reform, to
minimize litigation, eliminate ambiguity,
and reduce burden.

10. 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.

11. 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.

12. 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.

13. Technical Standards

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

14. 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 made a preliminary determination
that this action is one of a category of
actions which do not individually or
cumulatively have a significant effect on
the human environment. This rule is
categorically excluded from further
review under paragraph 34(g) of Figure
2–1 of the Commandant Instruction.
Upon receipt of consultation comments
all documentation will be made
available in the docket where indicated
under ADDRESSES. This rule involves
establishing a temporary safety zone. An
environmental analysis checklist and a
categorical exclusion determination will
be 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 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. 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

■ 2. Add temporary § 165.T05–0642 to
read as follows:

§ 165.T05–0642 Safety Zone; Gilmerton
Bridge Center Span Float-in, Elizabeth
River; Norfolk, Portsmouth, and
Chesapeake, Virginia.

(a) Regulated Area. The following area
is a safety zone: Regulated Area 1: All
waters of the Eastern Branch of the
Elizabeth River starting 400 feet behind
the Gilmerton Bridge center span barge
and extending to the entrance of the
Southern Branch of the Elizabeth River
and continuing south in the Southern
Branch of Elizabeth River to the
Gilmerton Bridge in the vicinity of
Norfolk, Portsmouth and Chesapeake,
VA. As the Gilmerton Bridge center
span barge transits through the
waterway, the northern portions of the
waterway will reopen. Regulated Area 2:
All waters of the Southern Branch of the
Elizabeth River directly under and 200
feet on either side of the Gilmerton
The final rule is effective on January 10, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0119. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available. Publicly available docket materials are available, i.e., confidential business information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the West Virginia Department of Environmental Protection, Division of Air Quality, 501 57th Street SE., Charleston, West Virginia 25304.

FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at khadr.asrah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On October 2, 2012 (77 FR 60085), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of the 2002 base year emissions inventory portion of the West Virginia SIP revision submitted by the State of West Virginia on May 28, 2009.

II. Summary of SIP Revision

The 2002 base year emissions inventory submitted by WVDEP on May 28, 2009 includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NOX), volatile organic compounds (VOCs), PM2.5, coarse particles (PM10), ammonia (NH3), and sulfur dioxide (SO2). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by WVDEP. The year 2002 was selected by WVDEP as the base year for the emissions inventory per 40 CFR 51.1006(b). A discussion of the emissions inventory development as well as the emissions inventory can be found in the May 28, 2009 SIP submittal and in the NPR. Specific requirements of the base year inventory and the rationale for EPA’s action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the 2002 base year PM2.5 emissions inventory as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

• Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

• Does not contain any unfunded mandate or significantly or uniquely