



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0069]

RIN 1625-AA00

Safety Zone for Margate Bridge, Intracoastal Waterway;

Margate, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a safety zone within the Intracoastal Waterway near Margate, NJ. This safety zone is necessary to ensure safety while the Margate Bridge undergoes repairs, specifically a high priority fender system replacement. The safety zone is intended to restrict vessel traffic movement on the west side of the channel to protect mariners from the hazards associated with the operation.

DATES: This rule is effective in the CFR on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 5:30 p.m. on March 16, 2012. This rule is effective with actual notice for purposes of enforcement at 7 a.m. on February 6, 2012, through 5:30 p.m. on March 16, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0069 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0069 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 rule, call or e-mail Lieutenant Corrina Ott, U.S. Coast Guard, Sector Delaware Bay, Chief of Waterways Management Division, Coast Guard; telephone 215-271-4902, e-mail Corrina.ott@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. It is impracticable to publish an NPRM because the Margate Bridge Company gave short notice to the Coast Guard. Furthermore, delay is contrary to the public interest because of the need for protection of the maritime public and vehicular traffic from the hazards involved with the deteriorating fender system of the bridge. Furthermore, publishing an NPRM is unnecessary because only one side of the channel will be closed, allowing marine access through the eastern side of the channel.

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. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to provide for the safety of life and property from the hazards associated with the work involved to repair the fender system. It is impracticable to publish an NPRM

because the fender system work is a high priority, aimed at protecting both marine and vehicular traffic. Furthermore, delay is contrary to the public interest because of the need for protection of the public from the hazards involved with the work associated with repairing the fender system.

Background and Purpose

The Margate Bridge Company is conducting operations to repair the fender system on the Margate Bridge over the Intracoastal Waterway. As part of the operations, a barge will be stationed in the vicinity of the Margate Bridge, anchored on the west side of the Channel. The barge will have the new fender system constructed on it. The work to repair the fender system is expected to last six weeks, from 7:00 a.m. on February 6, 2012 through 5:30 p.m. on March 16, 2012.

The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

Discussion of Rule

The Coast Guard Captain of the Port Delaware Bay is establishing a temporary safety zone beginning at 7:00 a.m. on February 6, 2012 through 5:30 p.m. on March 16, 2012. The boundary line for the temporary safety zone starts at

position 39 20'19"N, 074 30'53"W east to 39 20'19"N, 074 30'46"W south to 39 20'10"N, 074 30'49"W west to 39 20'10"N, 074 30'57"W and north to 39 20'19"N, 074 30'53"W. Vessels will not be permitted to transit through the safety zone unless they receive authorization from the Captain of the Port Delaware Bay or her representative. Such requests must be made one hour prior to the intended transit of the Safety Zone. Vessels may contact the Captain of the Port Delaware Bay or her representative in order to obtain authorization by contacting Sector Delaware Bay at (215) 271-4940. Vessels will be allowed to transit through the eastern portion of the channel while the repairs are on-going as this safety zone is intended to cover only the western portion of the channel.

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

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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) the Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to transit through the safety zone with the permission of the Captain of the Port on a case-by-case basis; and (iii) the eastern portion of the channel will remain open, allowing vessel traffic to transit through that portion while the repairs are ongoing.

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 will affect the following entities, some of which may be small entities: the owners or operator of the vessels intending to transit the western portion of the Intracoastal Waterway at or near Margate Bridge on February 6, 2012 until March 16, 2012 from 7:00 a.m. until 5:30 p.m. Monday through Saturday.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the eastern portion of the channel will remain open and accessible to marine traffic to pass safely around the zone and vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or her representative. Sector Delaware Bay will issue maritime advisories widely accessible to users of the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 which 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 implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessel traffic from transiting through a portion of the river in order to protect the safety of life and property on the waters. Under figure 2-1, paragraph (34)(g) of the instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this 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 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 temporary 165.T05-0096, to read as follows:

§ 165.T05-0096 Safety Zone for Margate Bridge,
Intracoastal Waterway; Margate, NJ

(a) Location. The boundary line for the temporary safety zone starts at position 39 20'19"N, 074 30'53"W east to 39 20'19"N, 074 30'46"W south to 39 20'10"N, 074 30'49"W west to 39 20'10"N, 074 30'57"W and north to 39 20'19"N, 074 30'53"W.

(b) Enforcement period. This rule is effective from February 6, 2012 until March 16, 2012, from 7 a.m. until 5:30 p.m.

(c) Regulations. All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.33 of this part.

(1) All persons and vessels transiting through the Safety Zone must be authorized by the Captain of the Port or her representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her representative one hour prior to the intended time of transit.

- (3) Vessels granted permission to transit must do so in accordance with the directions provided by the Captain of the Port or her representative to the vessel.
- (4) To seek permission to transit the Safety Zone, the Captain of the Port or her representative can be contacted via Sector Delaware Bay Command Center (215)271-4940.
- (5) This section applies to all vessels wishing to transit through the Safety Zone except vessels that are engaged in the following operations: (i) enforcing laws; (ii) servicing aids to navigation, and (iii) emergency response vessels.
- (6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;
- (7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;
- (8) The Captain of the Port may take possession and control of any vessel in the safety zone;
- (9) The Captain of the Port may remove any person, vessel, article, or thing from a safety zone;
- (10) No person may board, or take or place any

article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(11) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(d) Definitions. (1) The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

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

Dated: February 3, 2012

Todd C. Wiemers
Captain, U.S. Coast Guard
Alternate Captain of the Port Delaware Bay

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