

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 Commandant Instruction M16475.1D, 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 (32)(e) of the Instruction, from further environmental documentation.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); § 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 7 p.m. to 10 p.m. on November 27, 2004, in § 117.821 suspend paragraph (a)(5) and add a temporary paragraph (a)(7) to read as follows:

#### § 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) \* \* \*

(7) From 7 p.m. to 10 p.m. on November 27, 2004, the S.R. 74 Bridge

mile 283.1 at Wrightsville Beach may remain closed to navigation.

\* \* \* \* \*

Dated: November 1, 2004.

**Sally Brice-O'Hara,**

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

[FR Doc. 04–25206 Filed 11–10–04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05–04–189]

RIN 1625–AA09

#### Drawbridge Operation Regulation: Cape Fear River, Wilmington, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is changing the regulations that govern the operation of the Cape Fear River Memorial Bridge, at mile 26.8, in Wilmington, NC. This rule allows the bridge to remain in the closed-to-navigation position from 7:30 a.m. to 11 a.m. on November 14, 2004, to facilitate the 7th Annual Battleship NC Half Marathon.

**DATES:** This rule is effective from 7:30 a.m. to 11 a.m. on November 14, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–189 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6629. Fifth District maintains the public docket for this rulemaking.

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

#### SUPPLEMENTARY INFORMATION:

#### Good Cause for Not Publishing a NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is impracticable and contrary to the public interest as the 7th Annual Battleship North Carolina Half Marathon is scheduled for November 14th and immediate action is necessary

to minimize the potential danger to the public. The bridge closure is a necessary measure to facilitate public safety that allows for the orderly movement of participants and vehicular traffic during the marathon.

#### Good Cause for Making Rule Effective in Less Than 30 days

Under 5 U.S.C. 533(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. A 30-day delayed effective date is impracticable and contrary to the public interest as the event is scheduled for November 14th and immediate action is necessary to ensure public safety and provide for the orderly movement of participants and vehicular traffic during the marathon.

#### Background and Purpose

NCDOT, who owns and operates this movable (vertical lift-type) bridge, requested a temporary change to the operating regulations for the Cape Fear River Memorial Bridge in Wilmington NC, to facilitate the 7th Annual Battleship NC Half Marathon. The marathon is an annual event, attracting participants from the surrounding cities and states.

The existing regulations are outlined at 33 CFR 117.5, which requires the bridge to open on signal. The bridge has vertical clearances in the closed and full open positions to vessels of 65 feet and 135 feet at mean high water, respectively.

The Coast Guard has informed vessel operators with mast height greater than 65 feet of the closure period for the bridge so that these vessels can arrange their transits to minimize impact during the marathon. Vessels with mast heights lower than 65 feet still can transit through the drawbridge across Cape Fear River during this event since the drawbridge is closed not the waterway.

#### 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. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion was based on the fact that this rule will have minimal impact on maritime traffic transiting this area. Since Cape Fear River will remain open to navigation during this event,

mariners with mast height less than 65 feet may still transit through the bridge and vessels with mast heights greater than 65 feet can transit after the closed hours.

#### 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 not have a significant economic impact on a substantial number of small entities because even though the rule closes the Cape Fear River Memorial Bridge to mariners, those with mast heights less than 65 feet will still be able to transit through the bridge during the closed hours and mariners whose mast heights are greater than 65 feet will be able to transit after the closed hours.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on this action of Federal employee 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).

#### 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 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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. 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 Commandant Instruction M16475.1D, 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 (32)(e) of the Instruction, from further environmental documentation.

#### List of Subjects in 33 CFR Part 117

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■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33

CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. Add temporary § 117.T824 to read as follows:

**§ 117.T824 Cape Fear River.**

From 7:30 a.m. to 11 a.m. on November 14, 2004, the Cape Fear River Memorial Bridge, mile 26.8 at Wilmington, may remain closed to navigation.

Dated: November 1, 2004.

**Sally Brice-O'Hara,**

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

[FR Doc. 04-25207 Filed 11-10-04; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[COTP Mobile-04-034]

RIN 1625-AA87

**Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary security zones around all cruise ships while transiting or moored in the Port of Mobile and Mobile Ship Channel shoreward of the Mobile Sea Buoy. These security zones are needed to ensure the safety and security of these vessels. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port Mobile, or a designated representative.

**DATES:** This rule is effective from 8 a.m. (c.s.t.) on October 14, 2004, until 6 p.m. (c.s.t.) on April 14, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Mobile-04-034] and are available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615-1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Maurice York, Operations Department, Marine Safety Office Mobile, at (251) 441-5940.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect cruise ships and passengers from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature while a cruise ship is transiting the Mobile Ship Channel or Port of Mobile, and while moored in the Port of Mobile.

This rule is temporary. But because of continued security concerns, the Coast Guard does intend to establish similar permanent security zones. A NPRM will be published in the **Federal Register** and will allow the public an opportunity to comment on that proposed rule.

**Background and Purpose**

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (69 FR 55313, Sep. 13, 2004) (continuing the emergency declared with respect to terrorist attacks); (69 FR 56923, Sep. 22, 2002) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations)). In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased security concerns surrounding the transit of cruise ships, the Captain of the Port Mobile is establishing a temporary security zone around all cruise ships while such vessels are transiting the Mobile Ship Channel or Port of Mobile, and while moored in the Port of Mobile.

**Discussion of Rule**

The Coast Guard is establishing temporary security zones for the Port of Mobile and Mobile Ship channel. This rule establishes security zones that prohibit movement within 25 yards of all cruise ships while moored in the Port of Mobile, and prohibits movement within 100 yards of any cruise ship while transiting the Mobile Ship Channel or the Port of Mobile. For the purpose of this rule the term "cruise ship" is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR parts 120 and 128.

These security zones will be enforced when a cruise ship transiting inbound passes the Mobile Sea Buoy in approximate position 28°07'50" N, 88°04'12" W, at all times during transit through the Mobile Ship Channel and Port of Mobile, and while moored in the Port of Mobile. A security zone will exist during each cruise ship's transit outbound the Port of Mobile and the Mobile Ship Channel. Enforcement of the security zone will cease once the cruise ship passes the Mobile Sea Buoy on its outbound voyage.

These security zones are needed to protect the safety of life, property and the environment in the area. All vessels are prohibited from moving within these zones unless specifically authorized by the Captain of the Port Mobile, or a designated representative.

Persons or vessels that desire to enter into one of these security zones for the purpose of passing or overtaking a cruise ship that is in transit on the Mobile Ship Channel or in the Port of Mobile must contact the on-scene Coast Guard representative, request permission to conduct such action, and receive authorization from the on-scene Coast Guard representative prior to initiating such action. The on-scene Coast Guard representative may be contacted on VHF-FM channel 16. All persons and vessels authorized to enter into a security zone must obey any direction or order of the Captain of the Port or designated representative.

The Captain of the Port Mobile or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for these security zones.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of