

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. Under figure 2–1, paragraph (32)(e), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

- 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 authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.911 [Amended]

- 2. In § 117.911 remove and reserve paragraph (b).

Dated: July 8, 2004.

W.E. Justice,

*Captain, U.S. Coast Guard, Acting,
Commander, Seventh Coast Guard District.*
[FR Doc. 04–16245 Filed 7–16–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–076]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain closed from July 26 to July 31, August 2 to August 7, and August 9 to August 14, 2004, to facilitate necessary bridge maintenance.

DATES: This deviation is effective from July 26, 2004 through August 14, 2004.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

The owner of the bridge, New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate rehabilitation repairs at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from July 26 to July 31, August 2 to August 7, and August 9 to August 14, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: July 7, 2004.

David P. Pekoske,

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

[FR Doc. 04–16244 Filed 7–16–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–116]

RIN 1625–AA87

Security Zone; Cape Fear River, Eagle Island, North Carolina State Port Authority Terminal, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone at the North Carolina State Port Authority (NCSPA), Wilmington, to include the Cape Fear River and Eagle Island. Entry into or movement within the security zone will be prohibited without authorization from the COTP. This action is necessary to safeguard the vessels and the facility from sabotage, subversive acts, or other threats.

DATES: This rule is effective from June 13, 2004, until November 7, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–116 and are available for inspection or copying at the Marine Safety Office, 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Charles A. Roskam II, Chief Port Operations (910) 772–2200 or toll free (877) 229–0770.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. The Coast Guard is promulgating this security zone regulation to protect NCSPA Wilmington and the surrounding vicinity from threats to national security. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice-and-comment rulemaking and publication at least 30 days before the effective date of the rule are not required for this regulation.

Background and Purpose

Vessels frequenting the North Carolina State Port Authority (NCSPA) Wilmington facility serve as a vital link in the transportation of military munitions, explosives, equipment, and personnel in support of Department of Defense missions at home and abroad. This vital transportation link is

potentially at risk to acts of terrorism, sabotage and other criminal acts. Munitions and explosives laden vessels also pose a unique threat to the safety and security of the NCSA Wilmington, vessel crews, and others in the maritime community and the surrounding community should the vessels be subject to acts of terrorism or sabotage, or other criminal acts. The ability to control waterside access to vessels laden with munitions and explosives, as well as those used to transport military equipment and personnel, moored at the NCSA Wilmington is critical to national defense and security, as well as to the safety and security of the NCSA Wilmington, vessel crews, and others in the maritime community and the surrounding community. Therefore, the Coast Guard is establishing this security zone to safeguard human life, vessels and facilities from sabotage, terrorist acts or other criminal acts.

Discussion of Rule

The security zone is necessary to provide security for, and prevent acts of terrorism against vessels loading or offloading and the NCSA Wilmington facility during a military operation. It will include an area from 800 yards south of the Cape Fear River Bridge encompassing the southern end of Eagle Island, the Cape Fear River, and the grounds of the State Port Authority Terminal south to South Wilmington Terminal. The security zone will prevent access to unauthorized persons who may attempt to enter the secure area via the Cape Fear River, the North Carolina State Port Authority terminal, or use Eagle Island as vantage point for surveillance of the secure area. The security zone will protect vessels moored at the facility, their crews, others in the maritime community and the surrounding communities from subversive or terrorist attack that could cause serious negative impact to vessels, the port, or the environment, and result in numerous casualties.

No person or vessel may enter or remain in the security zone at any time without the permission of the Captain of the Port, Wilmington. Each person or vessel operating within the security zone will obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from this security zone.

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).

Although this regulation restricts access to the security zone, the effect of this regulation will not be significant because: (i) the COTP or his or her representative may authorize access to the security zone; (ii) the security zone will be enforced for limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 operators of vessels intending to transit or anchor in a portion of the Cape Fear River that is within the security zone.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the security zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the COTP or his or her designated representative. Before the effective period, we will issue maritime advisories widely available to users of the river.

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. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact the address listed under **ADDRESSES**.

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).

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 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 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 proposed 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.ID, 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 (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "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 record keeping 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–116 to read as follow:

§ 165.T05–116 Security Zone: Cape Fear River, Eagle Island and North Carolina State Port Authority Terminal, Wilmington, NC.

(a) *Location.* The following area is a security zone: The grounds of the North Carolina State Port Authority, Wilmington Terminal and the southern portion of Eagle Island; and an area encompassed from South Wilmington Terminal at 34°10'38.394" N, 077°57'16.248" W (Point 1); across Cape Fear River to Southern most entrance of Brunswick River on the West Bank at 34°10'38.052" N, 077°57'43.143" W (Point 2); extending along the West bank of the Brunswick River for approximately 750 yards to 34°10'57.062" N, 077°58'01.342" W (Point 3); proceeding North across the Brunswick River to the east bank at 34°11'04.846" N, 077°58'02.861" W (Point 4) and continuing north on the east bank for approximately 5000 yards along Eagle Island to 34°13'17.815" N, 077°58'30.671" W (Point 5); proceeding East to 34°13'19.488" N, 077°58'24.414" W (Point 6); and then approximately 1700 yards to 34°13'27.169" N, 077°57'51.753" W (Point 7); proceeding East to 34°13'21.226" N, 077°57'19.264" W (Point 8); then across Cape Fear River to the Northeast corner of the Colonial Terminal Pier at 34°13'18.724" N, 077°57'07.401" W (Point 9), 800 yards South of Cape Fear Memorial Bridge;

Proceeding South along shoreline (east bank) of Cape Fear River for approximately 500 yards; Proceeding east inland to Wilmington State Port property line at 34°13'03.196" N, 077°56'52.211" W (Point 10); extending South along Wilmington State Port property line to 34°12'43.409" N, 077°56'50.815" W (Point 11); Proceeding to the North entrance of Wilmington State Port at 34°12'28.854" N, 077°57'01.017" W (Point 12); Proceeding South along Wilmington State Port property line to 34°12'20.819" N, 077°57'08.871" W (Point 13); Continuing South along the Wilmington State Port property line to 34°12'08.164" N, 077°57'08.530" W (Point 14); Continuing along State Port property to 34°11'44.426" N, 077°56'55.003" W (Point 15); Proceeding South to the main gate of the Wilmington State Port at 34°11'29.578" N, 077°56'55.240" W (Point 16); Proceeding South approximately 750 yards to the Southeast property corner of the Apex facility at 34°11'10.936" N, 077°57'04.798" W (Point 17); Proceeding West to East bank of Cape Fear River at 34°11'11.092" N, 077°57'17.146" W (Point 18); Proceeding South along East bank of Cape Fear River to Original point of origin at 34°10'38.394" N, 077°57'16.248" W (Point 1). (NAD 1983)

(b) *Captain of the Port.* As used in this section, *Captain of the Port* means the Commanding Officer of the Marine Safety Office Wilmington, NC, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on her behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels with a need to enter or get passage within the security zone, must first request authorization from the Captain of the Port. The Captain of the Port's representative enforcing the zone can be contacted on VHF marine band radio, channel 16. The Captain of the Port can be contacted at (910) 772–2200 or toll free (877) 229–0770.

(3) The operator of any vessel within this security zone must:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port or his or her designated representative.

(ii) Proceed as directed by the Captain of the Port or his or her designated representative.

(d) *Effective period.* This rule is effective from June 13, 2004, until November 7, 2004.

Dated: June 13, 2004.

Byron L. Black,

*Commander, U.S. Coast Guard, Acting
Captain of the Port, Wilmington, North
Carolina.*

[FR Doc. 04-16381 Filed 7-16-04; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AL12

Exceptions to Definition of Date of Receipt Based on Natural or Man-made Disruption of Normal Business Practices

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule and request
for comments.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend the Veterans Benefits Administration's (VBA) adjudication regulations concerning the definition of "date of receipt" by authorizing the Under Secretary for Benefits to establish exceptions to the general rule when a natural or man-made event interferes with the channels through which VBA ordinarily receives correspondence, resulting in extended delays in receipt of claims, information or evidence from claimants served by VBA. Currently, VBA receives correspondence through its 57 Regional Offices (RO) and through the Appeals Management Center (AMC), which develops claims on appeal to the Board of Veterans Appeals. The intended effect is to ensure that claimants served by the affected VBA office or offices are not deprived of potential entitlement to benefits because of unexpected delays or impediments not caused by the claimants.

DATES: *Effective Date:* This interim rule is effective July 19, 2004. Comments must be received by September 17, 2004.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail to VAregulations@mail.va.gov; or, through www.Regulations.gov. Comments should indicate that they are submitted in response to "RIN 2900-AL12." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00

a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at 273-7210.

SUPPLEMENTARY INFORMATION: Pursuant to section 5110 of title 38, United States Code, the date of receipt of application generally governs the effective date of a VA benefit award by VBA. VA implemented the provisions of section 5110 at 38 CFR 3.1(r), which defines "date of receipt" for purposes of benefit entitlement as the date on which a claim, information, or evidence was received in a VBA office, except as to specific provisions for claims or evidence received in the State Department, Social Security Administration, or Department of Defense.

A delay in date of receipt of correspondence in VBA could deprive a veteran or beneficiary of one or more months of benefits potentially amounting to thousands of dollars. For example, under normal conditions a claimant could expect VBA to receive his or her application for benefits within days of mailing. However, an extended delay in mail delivery, such as that resulting from the introduction of anthrax into the U.S. postal system in October 2001, could add weeks or months to the time it takes VBA to actually receive that application, resulting in a later date of entitlement to benefits. Furthermore, such extended delay in mail delivery could result in a claimant being barred from further pursuing a claim or an appeal even though the claimant mails evidence in an otherwise timely manner to comply with a certain limitations period.

Although the regulations allow VBA to grant extensions on time limits in individual cases for good cause shown as under 38 CFR 3.109(b), the regulations currently do not provide any exception for widespread delays in receipt of claims or evidence, such as that experienced primarily by three VBA Regional Offices—Newark RO, New York RO and Washington (DC) RO—following the anthrax postal contamination in October 2001. Delays in receipt of claims or evidence due to events of natural or man-made origin threaten impairment or loss of benefits for VA claimants through no fault of their own.

VA wishes to protect the interests of claimants who send correspondence to

VBA through the normal channels of communication from being deprived of benefits to which they are entitled solely because those channels of communication have been disrupted due to events outside of the claimants' control.

Accordingly, through this interim final rule, we are amending § 3.1(r) to give the Under Secretary for Benefits authority to establish exceptions to the rule governing date of receipt when he or she determines that natural or man-made disruption of the normal channels of communication results in one or more VBA offices experiencing extended delays in the receipt of correspondence, including claims, information, and evidence. This permits the Under Secretary to immediately address emergency situations, such as an event delaying mail delivery or a disaster at a VBA office location that bars access to the building, and to avoid adverse consequences to claimants who otherwise have followed a normal course of seeking entitlement to VA benefits. It also permits a centralized and coordinated response to emergency situations, thereby avoiding possible inconsistent responses to such crises within and among regions. To determine the date of receipt, the Under Secretary alternatively would use factors such as the postmark or the date that the claimant signs his or her correspondence. The scope of the Under Secretary's action would depend on the scope of the crisis that prevents the timely delivery or receipt of correspondence. If the crisis were national, the Under Secretary would have the authority to declare a nationwide exception to the definition. If the crisis were merely regional, however, or were confined to a particular RO or the AMC, the Under Secretary's declaration of an exception would apply to that region or office only.

Under section 501(a)(1) of title 38, United States Code, the Secretary of Veterans Affairs has the authority to prescribe regulations respecting "the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws." Regulations defining when a claim for benefits, or evidence or information, is "received" by VBA fall within this category. Further, under section 512(a) of the same title, the Secretary may delegate his or her authority to carry out certain functions and duties to subordinate officials as he or she finds necessary. In this case, we designate the Under Secretary for Benefits as the official authorized to establish and implement