

TABLE FOUR

15. \* \* \*

\* \* \* \* \*

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS MICHAEL MURPHY .....	DDG 112	1.90 meters

16. \* \* \*

Vessel	Number	Obstruction angle relative ship's headings
USS MICHAEL MURPHY .....	DDG 112	109.60 THRU 112.50 [degrees]

\* \* \* \* \*

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS MICHAEL MURPHY .....	DDG 112	X	X	X	14.5

Approved: February 22, 2012.

**M. Robb Hyde,**

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

**J.M. Beal,**

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

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## 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 March 5, 2012 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 email Lieutenant Corrina Ott, U.S. Coast Guard, Sector Delaware Bay, Chief of Waterways Management Division, Coast Guard; telephone 215-271-4902, email [Corrina.ott@uscg.mil](mailto: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 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 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 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 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 (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 (adjust 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.ID, 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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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 1

RIN 2900-AN42

### Drug and Drug-Related Supply Promotion by Pharmaceutical Company Representatives at VA Facilities

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Veterans Affairs (VA) regulations regarding access to VA facilities by pharmaceutical company

representatives. The purposes of the rule are to reduce or eliminate any potential for disruption in the patient care environment, manage activities and promotions at VA facilities, and provide pharmaceutical company representatives with a consistent standard of permissible business practice at VA facilities. The amendments will facilitate mutually beneficial relationships between VA and pharmaceutical company representatives.

**DATES:** *Effective Date:* This final rule is effective April 4, 2012.

#### FOR FURTHER INFORMATION CONTACT:

Louis E. Cobuzzi, PBM Services (119), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461-7362. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 303, the Secretary of Veterans Affairs is responsible for “the proper execution and administration of all laws administered by the Department and for the control, direction, and management of the Department.” The Secretary has authority to prescribe all rules necessary to carry out the laws administered by the Department, such as section 303 regarding control and management of the Department. *See* 38 U.S.C. 501(a). VA has implemented this authority, as it pertains to management of VA facilities, in 38 CFR part 1.

VA amends 38 CFR part 1 to regulate access to VA medical facilities by pharmaceutical company representatives promoting drugs and drug-related supplies. Currently, many policies regarding access to VA facilities are established and maintained at the local level, either by Veterans Integrated Service Network (VISN) leaders or by administrators at particular facilities. A VISN, which we define in § 1.220(b), is a network of VA medical facilities located in a particular region. There are 21 such regions, and the areas that they service can be found at <http://www.vacareers.va.gov/networks.cfm>. On May 11, 2010, we proposed VA-wide rules that would be followed at the VISN and local levels.

We received five comments on the proposed rule. Although we make a few modifications based on these comments and some organizational changes for improved clarity, we otherwise adopt the rule as proposed for the reasons discussed in the May 11, 2010, notice. A detailed consideration of the comments follows.

### Requests for New Definitions

In response to the comments concerning the scope of § 1.220 as a whole, we have added a “Scope” paragraph, designated as paragraph (a), that states: “This rule governs on-site, in-person promotional activities, including educational activities, by pharmaceutical company representatives at VA medical facilities. It does not apply to the distribution of information and materials through other means.” This note clarifies that the rule governs only physical access to VA medical facilities and that information and materials can be distributed through other means than in-person at a VA medical facility. Consistent with this clarification of the scope of the rule, we have revised the heading of § 1.220 to “On-site activities by pharmaceutical company representatives at VA medical facilities.” Because we inserted a new paragraph (a) and made other organizational changes to the rule, the paragraph designations used in the proposed rule have changed. Throughout this rulemaking we cite to both the proposed rule paragraph designation and the final rule paragraph designation.

We note that we have made a technical revision to correctly refer to the “official National Formulary.” The proposed rule had referred to the “official National Formulary of the United States,” which is not the correct title of the National Formulary.

A commenter stated that the proposed rule does not clearly define “educational programs and materials.” The commenter stated that proposed paragraph (d) “appears to apply to programmed events with an educational, rather than promotional, purpose \* \* \* and the materials associated with such events.” To clarify the applicability of proposed paragraph (d), now designated as paragraph (f), we have added the following: “An educational program is a pre-scheduled event or meeting during which a pharmaceutical company representative provides information about a drug or drug-related supply.” We have also modified the word “materials” where it appears in paragraph (f) with the word “associated” to make clear that the materials discussed in paragraph (f) are those materials intended for use in connection with an educational program. We note that this definition applies only to this section and does not apply to the similar terms as used by other U.S. Government agencies, such as the Food and Drug Administration (FDA), in their regulations or guidances.