

the plan are qualified public safety employees (within the meaning of section 72(t)(10)(B)).

(3) *Benefit distribution prior to retirement.* For purposes of paragraph (b)(1)(i) of this section, retirement does not include a mere reduction in the number of hours that an employee works. Accordingly, benefits may not be distributed prior to normal retirement age solely due to a reduction in the number of hours that an employee works.

(4) *Effective date.* Except as otherwise provided in this paragraph (b)(4), paragraphs (b)(2) and (3) of this section are effective May 22, 2007. In the case of a governmental plan (as defined in section 414(d)), paragraphs (b)(2) and (3) of this section are effective for plan years beginning on or after January 1, 2009. In the case of a plan maintained pursuant to one or more collective bargaining agreements that have been ratified and are in effect on May 22, 2007, paragraphs (b)(2) and (3) of this section do not apply before the first plan year that begins after the last of such agreements terminate determined without regard to any extension thereof (or, if earlier, May 24, 2010. See § 1.411(d)-4, A-12, for a special transition rule in the case of a plan amendment that increases a plan's normal retirement age pursuant to paragraph (b)(2) of this section.

■ **Par. 3.** Section 1.411(d)-4 is amended by adding Q&A-12 as follows:

**§ 1.411(d)-4 Section 411(d)(6) protected benefits.**

\* \* \* \* \*

Q-12. Is there a transition period during which a plan is permitted to eliminate a right to in-service distributions in connection with an amendment to ensure that the plan's normal retirement age satisfies the requirements of § 1.401(a)-1(b)(2)?

A-12. (a) *In general.* A plan amendment that changes the normal retirement age under the plan to a later normal retirement age pursuant to § 1.401(a)-1(b)(2) does not violate section 411(d)(6) merely because it eliminates a right to an in-service distribution prior to the amended normal retirement age. However, this paragraph does not provide relief from any other applicable requirements; for example, this relief does not permit the amendment to violate section 411(a)(9) (requiring that the normal retirement benefit not be less than the greater of any early retirement benefit payable under the plan or the benefit under the plan commencing at normal retirement age), section 411(a)(10) (if the amendment changes the plan's vesting

rules), section 411(d)(6) (other than elimination of the right to an in-service distribution prior to the amended normal retirement age), or section 4980F (relating to an amendment that reduces the rate of future benefit accrual). This paragraph only applies to a plan amendment that is adopted after May 22, 2007 and on or before the last day of the applicable remedial amendment period under § 1.401(b)-1 with respect to the requirements of § 1.401(a)-1(b)(2) and (3).

(b) *Example.* The following example illustrates the application of this section:

(i) *Facts.* (A) Plan A is a defined benefit plan intended to be qualified under section 401(a). Plan A is maintained by a calendar year taxpayer and has a normal retirement age that is age 45. For employees who cease employment before normal retirement age with a vested benefit, Plan A permits benefits to commence at any date after the attainment of normal retirement age through attainment of age 70½ and provides for benefits to be actuarially increased to the extent they commence after normal retirement age. For employees who continue employment after attainment of normal retirement age, Plan A provides for benefits to continue to accrue and permits benefits to commence at any time, with an actuarial increase in benefits to apply to the extent benefits do not commence after normal retirement age. Age 45 is an age that is earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

(B) On February 18, 2008, Plan A is amended, effective May 22, 2007, to change its normal retirement age to the later of age 65 or the fifth anniversary of participation in the plan. The amendment provides full vesting for any participating employee who is employed on May 21, 2007, and who terminates employment on or after attaining age 45. The amendment provides employees who cease employment before the revised normal retirement age and who are entitled to a vested benefit with the right to be able to commence benefits at any date from age 45 to age 70½. The plan amendment also revises the plan's benefit accrual formula so that the benefit for prior service (payable commencing at the revised normal retirement age or any other age after age 45) is not less than would have applied under the plan's formula before the amendment (also payable commencing at the corresponding dates), based on the benefit accrued on May 21, 2007, and provides for service thereafter to have the same rate of future benefit accrual. Thus, for any participant employed on May 21, 2007, with respect to benefits accrued for service after May 21, 2007, the amount payable under the plan (as amended) at any benefit commencement date after age 45 is the same amount that would have been payable at that benefit commencement date under the plan prior to amendment. The plan amendment also eliminates the right to an in-service distribution between age 45 and the revised normal retirement age. Plan A has

been operated since May 22, 2007, in conformity with the amendment adopted on February 18, 2008.

(ii) *Conclusion.* The plan amendment does not violate section 411(d)(6). Although the amendment eliminates the right to commence benefits in-service between age 45 and the revised normal retirement age, the amendment is made before the last day of the remedial amendment period applicable to the plan under § 1.401(b)-1 with respect to the requirements of § 1.401(a)-1(b)(2) and (3), and therefore the amendment is permitted under paragraph (a) of this A-12. Further, the amendment does not result in a reduction in any benefit for service after May 22, 2007.

Thus, the amendment does not result in a reduction in any benefit for future service, and advance notice of a significant reduction in the rate of future benefit accrual is not required under section 4980F.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: May 9, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-07-020]

RIN 1625-AA08

### Special Local Regulations for Marine Events; Delaware River, Delaware City, DE

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations during the "7th Annual Escape from Fort Delaware Triathlon", an event to be held June 9, 2007 on the waters of Delaware River at Delaware City, DE. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action will temporarily restrict vessel traffic in a portion of the Delaware River during the 7th Annual Escape from Fort Delaware Triathlon.

**DATES:** This rule is effective from 5:30 a.m. to 10:30 a.m. on June 9, 2007.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket (CGD05-07-020) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford

Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** D.M. Sens, Project Manager, Compliance and Inspection Branch, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On March 21, 2007, we published a Notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Delaware River, Delaware City, DE in the **Federal Register** (72 FR 13221). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, area newspapers and local radio stations.

**Background and Purpose**

On June 9, 2007, the Escape from Fort Delaware Triathlon, Inc. will sponsor the “7th Annual Escape from Fort Delaware Triathlon”. The swimming segment of the event will consist of approximately 500 swimmers competing across a one mile course along the Delaware River between Pea Patch Island and Delaware City, Delaware. The competition will begin at Pea Patch Island. The participants will swim across to the finish line located at the Delaware City Wharf, swimming approximately one mile, across Bulkhead Shoal Channel. Approximately 20 support vessels will accompany the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, support craft and other transiting vessels.

**Discussion of Comments and Changes**

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Delaware River, near Delaware City, DE.

**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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this regulation restricts vessel traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, area newspapers and radio stations 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 this section of the Delaware River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 5:30 a.m. to 10:30 a.m. on June 9, 2007. Vessels desiring to transit the event area will be able to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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. 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 the address listed under **ADDRESSES**. 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.

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 an 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 Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections.

Under figure 2–1, paragraph (34)(h), 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 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add temporary § 100.35–T05–020 to read as follows:

##### § 100.35–T05–020 Delaware River, Delaware City, DE.

(a) *Regulated area.* The regulated area includes all waters of the Delaware River within 500 yards either side of a line drawn southwesterly from a point near the shoreline at Pea Patch Island, at latitude 39°35'08" N, 075°34'18" W, thence to latitude 39°34'43.6" N, 075°35'13" W, a position located near the Delaware City Wharf, Delaware City, DE. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 5:30 a.m. to 10:30 a.m. on June 9, 2007.

Dated: May 12, 2007.

**Larry L. Hereth,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01–07–047]

#### Drawbridge Operation Regulations; Pequonnock River, Bridgeport, CT

**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 regulation governing the operation of the Stratford Avenue Bridge across the Pequonnock River, mile 0.1, at Bridgeport, Connecticut. Under this temporary deviation, in effect from May 29, 2007 through September 17, 2007, the Stratford Avenue Bridge may remain in the closed position, except for scheduled daily bridge openings. This deviation is necessary to facilitate scheduled bridge maintenance.

**DATES:** This deviation is effective from May 29, 2007 through September 17, 2007.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212)