

yard radius of approximate position 42°16'35" N, 070°51'15" W.

(ii) *Enforcement date.* This rule will be enforced from 9 a.m. through 11 a.m. on July 18, 2009.

(4) *Charles River One Mile Swim, Charles River, Boston, MA.* (i) All waters of Charles River, from surface to bottom, between the Longfellow Bridge and the Harvard Bridge.

(ii) *Enforcement date.* This rule will be enforced from 8 a.m. through 9 a.m. on June 21, 2009.

(5) *Toyota/Sea Doo US Regional Championships, Salisbury Beach, Salisbury, MA.* (i) The following area is a regulated area: All waters of the Atlantic Ocean near Salisbury Beach, Salisbury, MA, from surface to bottom, within a one hundred (100) yard radius of the race course site located at approximate position 42° 51'34" N, 070° 48'34" W.

(ii) *Enforcement date.* This rule will be enforced daily from 6:30 a.m. through 5 p.m. on June 27 through June 28, 2009.

(6) *The Iron Distance Triathlon at Plymouth Rock, Plymouth Inner Harbor, Plymouth, MA.* (i) All waters of Plymouth Inner Harbor, from surface to bottom, within a four hundred (400) yard radius of approximate position 41°57'50" N, 070°39'42" W.

(ii) *Enforcement date.* This rule will be enforced from 7 a.m. through 9:30 a.m. on September 6, 2009.

(7) *The Mayflower Triathlon at Plymouth Rock, Plymouth Inner Harbor, Plymouth, MA.* (i) All waters of Plymouth Inner Harbor, from surface to bottom, within a four hundred (400) yard radius of approximate position 41°57'50" N, 070°39'42" W.

(ii) *Enforcement date.* This rule will be enforced from 7:30 a.m. through 12:30 p.m. on August 31, 2008.

(8) *31st Annual Celebrate the Clean Harbor Swim, Gloucester Harbor, Gloucester, MA.* (i) All waters of Gloucester Harbor, from surface to bottom, within a four hundred (400) yard radius of approximate position 41°35'35" N, 070°39'45" W.

(ii) *Enforcement Date.* This rule will be enforced from 10 a.m. through 11 a.m. on September 5, 2009.

(9) *Gloucester Triathlon, Western Harbor, Gloucester, MA.* (i) All waters of Western Harbor, from surface to bottom, starting at the beach at position 42°36'34" N, 070°40'02" W, thence to 42°36'29" N, 070°40'04" W, thence to 42°36'28" N, 070°40'00" W, thence to the beach at position 42°36'33" N, 070°39'58" W.

(ii) *Enforcement Date.* This rule will be enforced from 10 a.m. through 11 a.m. on September 5, 2009.

(b) *Definition.* As used in this section, "designated representative" means any Coast Guard commissioned, warrant, or petty officer, or any federal, state, or local law enforcement officer authorized to enforce this regulation on behalf of the Coast Guard Captain of the Port (COTP).

(c) *Regulations.* (1) Entry into or remaining in the special local regulation area described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port (COTP) Boston, or the COTP's designated representative.

(2) Persons desiring to transit the area covered by the special local regulations may contact the Captain of the Port at telephone number 617-223-3201 or via on-scene patrol personnel on VHF channel 16 to seek permission to do so. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: June 18, 2009.

**John N. Healey,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston.*

[FR Doc. E9-17106 Filed 7-17-09; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0565]

RIN 1625-AA00

#### Safety Zone; Atlantic Intracoastal Waterway, Oak Island, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Oak Island, North Carolina. The safety zone is necessary to provide for the safety of life on navigable waters during the installation of bridge girders at the new high-level fixed highway bridge at the second crossing to Oak Island, North Carolina.

**DATES:** This rule is effective from 7 a.m. on July 22, 2009 through 5:30 p.m. on August 12, 2009.

**ADDRESSES:** Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0565 and are available online by going to <http://www.regulations.gov>, selecting the

Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0565 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is 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 CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone (252) 247-4525, e-mail [Stephen.W.Lyons2@uscg.mil](mailto:Stephen.W.Lyons2@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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect the maritime public from the hazards associated with the installation of bridge girders, including the use of heavy equipment and falling debris. The necessary information to determine whether the installation project posed a threat to persons and vessels was not provided with sufficient time to publish an NPRM. For the safety concerns noted, it is in the public interest to have this regulation in place during the girder installation.

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 public interest, since immediate action is needed to ensure the public's safety from the hazards noted above.

## Background and Purpose

The State of North Carolina Department of Transportation awarded a contract to Lee Construction Company of the Carolinas, Inc. of Charlotte, North Carolina, to perform bridge girder installation at the new high-level fixed highway bridge at the second crossing to Oak Island, North Carolina. The contract provides for the installation of 8 bridge girders. The center bridge girder installation is scheduled to begin on July 22, 2009 through July 29, 2009 between the hours of 7 a.m. to 5:30 p.m. each day. The contractor will be utilizing a deck barge with a 55' beam, a 450 ton ringer crane on a stationary barge with an 85' beam, and assist tug to conduct the girder installation. This operation presents a potential hazard to mariners from falling debris and the use of heavy equipment and machinery. To provide for the safety of the public, the Coast Guard will temporarily restrict access to this section of the Atlantic Intracoastal Waterway during girder installation.

## Discussion of Rule

The Coast Guard is establishing a temporary safety zone to encompass the waters of the Atlantic Intracoastal Waterway extending 250 yards in all directions from the main construction site. All vessels are prohibited from transiting this section of the waterway while the safety zone is in effect. Entry into the zone will not be permitted except as specifically authorized by the Captain of the Port or a designated representative. To seek permission to transit the area, mariners can contact Sector North Carolina at telephone number (252) 247-4570. This zone will be enforced from 7 a.m. to 5:30 p.m. each day, from July 22, 2009 through August 12, 2009. The enforcement period is scheduled to run longer than the planned operation to account for any delays in construction. The Captain of the Port may cancel enforcement of the safety zone if construction is completed before August 12.

## 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, 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.

Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration of time, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) vessels may be granted permission to transit the area by the Captain of the Port or a designated representative.

## 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 effect the following entities, some of which may be small entities: the owners or operators of tug and barge, recreational, and fishing vessels intending to transit the specified portion of the Atlantic Intracoastal Waterway from 7 a.m. to 5:30 p.m. beginning July 22, 2009 through August 12, 2009.

This safety zone 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 limited time each day. Although the safety zone will apply to the entire width of the Atlantic Intracoastal Waterway, vessel traffic can use alternate waterways to transit safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to the 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 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.

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 establishes a temporary safety zone to protect the public from bridge construction operations. An environmental analysis checklist and a 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 recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—SAFETY ZONES

■ 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 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.T05-0565 to read as follows:

#### § 165.T05-0565 Safety Zone; Atlantic Intracoastal Waterway, Oak Island, NC.

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: This zone includes the waters of the Atlantic Intracoastal Waterway extending 250 yards in all directions from the main construction site at the new high-level fixed highway bridge at the second crossing to Oak Island, North Carolina.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (252) 247-4570 or by radio on VHF Marine Band Radio, channels 13 and 16.

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

(e) *Enforcement period.* This section will be enforced from 7 a.m. to 5:30 p.m. each day from July 22, 2009 through August 12, 2009, unless cancelled earlier by the Captain of the Port.

Dated: June 24, 2009.

**J.E. Ryan,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0274]

RIN 1625-AA00

#### Safety Zone; Norfolk Tides Post-Game Fireworks Displays, Elizabeth River, Norfolk, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Elizabeth River in the vicinity of Harbor Park, Norfolk, VA in support of the post-game fireworks displays over the Elizabeth River. This action will protect the maritime public on the Elizabeth River from the hazards associated with fireworks displays.

**DATES:** This rule is effective from 9 p.m. on July 2, 2009 until 10:30 p.m. on September 4, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0274 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0274 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is 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.

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