

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[CGD13-06-052]

RIN 1625-AA00

Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project, Construction Vessels and Equipment Under and in Immediate Vicinity of West Span**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around construction vessels and mooring lines under the West Span of the Tacoma Narrows Bridge during the deck erection phase of construction. This safety zone will be in effect regardless of whether construction vessels are present or not. This zone approximately encompasses all waters from the Gig Harbor shoreline to just east of the west bridge caissons, extending 1500 feet north and south. The Coast Guard is taking this action to safeguard the public from possible collision with the vessels or their mooring lines, chains, or cables. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13-06-052 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jes Hagen, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217-6958.

SUPPLEMENTARY INFORMATION:**Background and Purpose**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective without publication of an NPRM in the *Federal Register*. Publishing a NPRM would be contrary to public interest since immediate action is necessary to

ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place. 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*. Making the rule effective after 30 days of publication in the *Federal Register* would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

Discussion of Rule

The Coast Guard is adopting a temporary safety zone regulation on the waters of Tacoma Narrows, Washington, for the New Tacoma Narrows Bridge construction project. The Coast Guard has determined it is necessary to restrict access to the waters under the West Span, in a box bounded by the points: 47-16.44' N, 122-33.35' W; 47-16.34' N, 122-33.04' W; 47-16.1' N, 122-33.33' W; 47-16.21' N, 122-33.63' W, in order to safeguard people and property from hazards associated with the presence of construction vessels and equipment in that area. These safety hazards include, but are not limited to, hazards to navigation, collisions with mooring cables, and collisions with work vessels and barges. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory

policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this regulation would encompass a small area that should not impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of the Tacoma Narrows during the time this regulation is in effect. The zone will not have a significant economic impact on a substantial number of small entities due to its small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601-612) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 temporary rule would call 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 State, local, or tribal government, in the aggregate, or 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 temporary rule would 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 temporary 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 concern 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 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)(g), of the Instruction, from further environmental documentation.

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. 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. From 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007, a temporary § 165.T13–039 is added to read as follows:

§ 165.T13–039 Safety Zone: New Tacoma Narrows Bridge Construction Project, Construction Vessels and Equipment Under and in Immediate Vicinity of West Span.

(a) *Location.* The following is a safety zone: All waters of the Tacoma Narrows, Washington State, within a box bounded by the points: 47–16.44’ N, 122–33.35’ W; 47–16.34’ N, 122–33.04’ W; 47–16.1’ N, 122–33.33’ W; and 47–16.21’ N, 122–33.63’ W [Datum: NAD 1983]. This zone approximately encompasses all waters from the Gig Harbor shoreline to just east of the west bridge caissons, extending 1500 feet north and south.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the zone except for those persons involved in the construction of the new Tacoma Narrows Bridge, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative. This safety zone will be in effect whether vessels are present or not.

(c) *Applicable dates.* This section applies from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

Dated: November 15, 2006.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

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