

benefits, the Commission has denied transmission planning regions the flexibility it wisely acknowledged to be necessary with respect to the zone issue. I agree with SPP and OGE that we should provide that flexibility.⁸

In Order No. 1000, the Commission balanced many competing policy considerations in an effort to adopt the reforms necessary to assure just and reasonable rates.⁹ This balance may be most pronounced in the Commission's efforts to ensure that the regional planning process is broad, inclusive, and fair, while at the same time, mindful of the obligations and attributes of incumbent transmission providers. The Commission also went to great lengths to provide transmission-planning regions with the flexibility to negotiate cost allocation methodologies that allocate costs in a manner that they believe is at least roughly commensurate with benefits. Where the mutual achievement of these objectives raises complex questions, as it does with respect to whether any amount of regional funding converts an otherwise local reliability project in to a regional project for purposes of the ROFR, the Commission should decide the issue on compliance, with a record, rather than by establishing categorical rules that may undermine the planning and cost allocation goals Order No. 1000 was intended to achieve.¹⁰

Accordingly, I respectfully dissent in part.

Cheryl A. LaFleur,
Commissioner.

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⁸In its request for clarification of Order 1000-A, SPP seeks guidance on how to reconcile the definitions and principles underlying Order No. 1000 with the Commission's summary determination in Order No. 1000-A that any amount of regional funding for local reliability projects requires elimination of the ROFR. *See* SPP Request for Clarification at 7-16. Unlike my colleagues, I believe that SPP's filing may properly be characterized as a request for clarification, and therefore, should be addressed in this order. However, I would not reach the merits of SPP's arguments. Instead, I would grant rehearing on the grounds that the Commission should have deferred deciding the issue until compliance and invite SPP to make its arguments on compliance.

⁹Order 1000-B at P 55.

¹⁰*See e.g.* OGE Request for Rehearing at 6 ("[T]he broad definition of what constitutes regional cost allocation would prohibit regional entities such as SPP from adopting approaches they believe would effectively allocate costs and fairly balance stakeholder interests.").

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0741]

RIN 1625-AA00

Safety Zone, Atlantic Intracoastal Waterway; Carolina Beach, 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 Carolina Beach, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina. The safety zone will temporarily restrict vessel movement within the designated area starting on December 20, 2012, through October 31, 2013.

DATES: This rule is effective from December 20, 2012, until October 31, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0741]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 rule, call or email CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252-247-4525, email Joseph.M.Edge@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On August 21, 2012, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) (33 FR 50444). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to American Bridge Company of Virginia Beach, Virginia to perform bridge maintenance on the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina. The contract provides for cleaning, painting, and steel repair to commence on December 20, 2012 with a completion date of October 31, 2013. The contractor will utilize a 40 foot by 60 foot sectional barge as a work platform and for equipment staging. This safety zone will provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction horizontal clearance. During this period the Coast Guard will require a one hour notification to the work supervisor for passage through the U.S. 421 Fixed Bridge along the Atlantic Intracoastal Waterway, mile 295.6, Carolina Beach, North Carolina. The bridge notification requirement will apply during the maintenance period for vessels requiring a horizontal clearance of greater than 60 feet.

C. Discussion of Comments, Changes and the Final Rule

We received no comments on the proposed rule. No public meeting was requested, and none was held.

The temporary safety zone will encompass the waters directly under the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina (34°03'21" N, 077°53'58" W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 60 feet will be required to make a one hour advanced notification to the work supervisor while the safety zone is in effect. This zone will be in effect from 8 a.m. December 20, 2012 through 8 p.m. October 31, 2013.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting the designated portion of the Atlantic Intracoastal Waterway, it imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 60 feet.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rule. 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 affects the following entities, some of which may be small entities: the owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 a.m. December 20, 2012 through 8 p.m. October 31, 2013.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification to the work supervisor. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

3. 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. 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**, above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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 (adjusted for inflation) 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the

establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under

ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from 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 § 165.T05–0741 to read as follows:

§ 165.T05–0741 Safety Zone, Atlantic Intracoastal Waterway; Carolina Beach, NC.

(a) *Regulated area.* The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the US 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina (34°03'21" N, 077°53'58" W).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0741. In addition the following regulations apply:

(1) All vessels requiring greater than 60 feet horizontal clearance to safely transit through the US 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina must contact the work supervisor tender on VHF–FM marine band radio channels 13 and 16 or at (410) 320–9877 one hour in advance of intended transit.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.* (1) *Captain of the Port North Carolina* means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) *Work Supervisor* means the contractor's on site representative.

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

(e) *Enforcement period.* This section will be enforced from 8 a.m. December 20, 2012 through 8 p.m. October 31, 2013 unless cancelled earlier by the Captain of the Port.

Dated: October 4, 2012.

A. Popiel,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0812]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; Emerald Isle, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the timeframe for a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Emerald Isle, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance of the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina. The safety zone

extension will temporarily restrict vessel movement within the designated area starting on December 12, 2012 through February 14, 2013.

DATES: This rule is effective from December 12, 2012, through February 14, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0812. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 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 rule, call or email CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email Joseph.M.Edge@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On September 17, 2012 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (33 FR 57063) for this rulemaking. We received no comments in response to the NPRM. No public meeting was requested, and none was held.

B. Basis and Purpose

North Carolina Department of Transportation has contracted Marine Contracting Corporation of Virginia Beach, Virginia to perform bridge maintenance on the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina. The contract provides for replacement of the fender system to commence on September 12, 2012 with a completion date of December 12, 2012. The contractor has been granted an extension by North Carolina Department of Transportation until February 14, 2013 to complete the bridge maintenance. The contractor will utilize