

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117****[USCG–2009–0054]****RIN 1625–AA09****Drawbridge Operation Regulation; Tennessee River, Decatur, AL****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operations of the Southern Railroad Drawbridge across the Tennessee River, mile 304.4, at Decatur, Alabama. The deviation is necessary to allow time for conducting needed maintenance and repairs to the bridge. This deviation allows the bridge to remain in the closed to navigation position and not open to vessel traffic.

**DATES:** This deviation is effective from 8 a.m. to 8 p.m. on February 20, 2009 and from 8 a.m. to 8 p.m. on February 24, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0054 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspections or copying at two locations: 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, and the Robert A. Young Federal Building, Room 2.107f, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, (314) 269–2378.

**SUPPLEMENTARY INFORMATION:** The Norfolk Southern Railway requested a temporary deviation for the Southern Railroad Drawbridge, across the Tennessee River, Mile 304.4, at Decatur, Alabama to remain in the closed to navigation position for two 12 hour periods in order to facilitate critical bridge maintenance. The Southern Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a

request to open is given in accordance with the subpart. In order to facilitate the needed bridge work, the drawbridge must be kept in the closed-to-navigation position for two 12 hour periods. This deviation allows the bridge to remain in the closed to navigation position and not open for vessel traffic from 8 a.m. to 8 p.m. on February 20, 2009 and 8 a.m. to 8 p.m. on February 24, 2009.

Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted.

The Southern Railroad Drawbridge navigation span has a vertical clearance of 10.52 feet above normal pool in the closed to navigation position. Performing necessary maintenance on the bridge is required to ensure the continued reliability of the lift span. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators.

There are no alternate routes for vessels transiting this section of the Tennessee River.

This temporary deviation has been coordinated with waterway users. No objections were received.

Dated: February 4, 2009.

**Roger K. Wiebusch,**

*Bridge Administrator, Eighth Coast Guard District (dwb).*

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**BILLING CODE 4910–15–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[Docket No. USCG–2008–1272]****RIN 1625–AA00****Safety Zone; Underwater Object, Massachusetts Bay, MA.****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is extending the duration of a temporary safety zone surrounding an underwater object located approximately 17 miles northeast of Scituate, Massachusetts in Massachusetts Bay. This action is necessary to ensure that vessels are not endangered by dredging, diving, salvage, anchoring, fishing or other activities in this area. This temporary rulemaking is needed to protect the environment, the commercial fishing industry, and the general public from

potential hazards associated with the underwater object.

**DATES:** This rule extends the current temporary regulation, docket number USCG–2008–1272, Safety Zone; Underwater Object, Massachusetts Bay, MA which has been in effect since 11 p.m. January 8, 2009, until 11:59 p.m. January 14, 2009. This current rule will be in effect from 12 a.m. January 15, 2009, until 11:59 p.m. March 14, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1272 and will be available online at <http://www.regulations.gov>. They will also be available for inspection or copying in two locations: 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, and United States Coast Guard Sector Boston, 427 Commercial St., Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Chief Eldridge McFadden, Waterways Management, at 617–223–3000. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. 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 because immediate action is needed to protect the public from the hazards posed by an unknown underwater object located in Massachusetts Bay. This object is located in approximately 95 feet of water 17 miles northeast of Scituate, Massachusetts. This rule extends the existing safety zone, which expired on January 14, 2009, so as to protect the environment, the commercial fishing industry, and the general public, to the extent practicable, from the hazards associated with this unknown object, while investigative efforts continue and risk mitigation strategies are further explored and implemented.

For the same reasons, 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**.

## Background and Purpose

On January 3, 2009, the vessel PATRIOT, a 54 foot steel-hull boat was involved in an accident, which resulted in the presumed sinking of the vessel with the loss of two crewmembers onboard. The F/V PATRIOT was reported to have an estimated 5000 gallons of fuel onboard. In the days following the accident, the position of the vessel remained unknown, but several vessels reported catching their nets on an unknown object on the bottom of the ocean. On January 8, 2009, the Coast Guard established a temporary safety zone around this reported underwater object located in Massachusetts Bay approximately 17 miles northeast from Scituate, Massachusetts, in position 42°24'27" N, 70°27'14" W. This underwater object created an immediate and significant danger to the environment, the commercial fishing industry, and the general maritime public, as mariners unaware of its presence could make contact with the object and cause damage to their vessel equipment below the water, or fishing gear. While investigative efforts continue, and risk mitigation strategies are further explored it is necessary to extend the duration of the safety zone.

## Discussion of Rule

This regulation extends the duration of the temporary safety zone on the navigable waters of Massachusetts Bay, Massachusetts, 17 miles northeast from Scituate, Massachusetts. The temporary safety zone extends for 500 yards in all directions from an underwater object located in approximate position 42°24'27" N, 70°27'14" W.

This action is intended to prohibit vessels and persons from entering, transiting, anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston, Massachusetts. This rule extends the current temporary Safety Zone; Underwater Object, Massachusetts Bay, through 11:59 p.m. March 14, 2009. Once the object can be properly identified and the potential hazards fully assessed and mitigated, the Coast Guard will cease enforcement of the safety zone and mariners will be able to transit through the area. Public notifications will be made of this safety zone through broadcast notice to mariners. Marine traffic may transit safely in all other areas of Massachusetts Bay, but are restricted from entering the area delineated above.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to the limited area and duration covered by this safety zone.

## 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.

We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public. This impact, however, is outweighed by the safety risks mitigated by the enactment of this zone. Further, the safety zone covers an area that is so small that mariners will be able to transit around the zone.

## 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, anchor, or fish in a portion of the Massachusetts Bay covered by the safety zone. This rule will not have a significant impact on a substantial number of small entities for the following reasons: the area this rule is affecting is very small and vessels may transit around the safety zone.

## 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 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 Department of Homeland Security Management Directive 0023.1 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 under the Instruction 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 as the rule extends a temporary safety zone. Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are required for this rule because it concerns a safety zone for an emergency situation of longer than 1 week in duration. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be 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—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; 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.T01–1272 to read as follows:

#### § 165.T01–1272 Safety Zone: Underwater Object, Massachusetts Bay, MA.

(a) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, of Massachusetts Bay within a 500 yard radius of underwater object, in approximate position 42°24'27" N, 70°24'14" W.

(b) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been

authorized to act on the behalf of the Captain of the Port Boston.

(c) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering the safety zone without permission from the Captain of the Port Boston. In addition all vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port Boston or designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons desiring to enter the safety zone may request permission from the Captain of the Port Boston via VHF Channel 16 or via telephone at (617) 223–3201.

(d) *Enforcement period.* This rule will be enforced from 12:00 a.m. January 15, 2009, until 11:59 p.m. March 14, 2009.

Dated: January 14, 2009.

G.P. Kulisch,

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

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–HQ–OAR–2009–0017; FRL–8774–6]

#### Extension of Deadline for Action on Section 126 Petition From Delaware

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is extending by 6 months the deadline for EPA to take action on a petition submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). The petition requests that EPA make a finding under section 126(b) of the Clean Air Act (CAA) that electric generating units (EGUs) in nine upwind states are emitting air pollutants in violation of the provisions of section 110(a)(2)(D)(i) of the CAA. Under the CAA, EPA is authorized to grant a time extension for responding to the petition