

Coast Guard

33 CFR Part 165

[CGD13-06-051]

RIN 1625-AA00

Safety Zone Regulations; Tacoma Narrows Waterway, 100 Yards  
North and South of the Tacoma Narrows power line project, WA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Puget Sound including the waters of Tacoma Narrows, WA. Obsolete power lines are being removed over the Tacoma Narrows Waterway. This may pose a significant threat to public safety, to vessels and their occupants transiting the Tacoma Narrows Waterway. The Coast Guard is establishing this zone to ensure the safety of all persons and vessels transiting the Tacoma Narrows Waterway. 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. (PST) November 03, 2006 to 11:59 p.m. (PST) November 30, 2006, during periods in which power line removal work is being conducted between the

power line towers on both banks of the Tacoma Narrows or unless sooner cancelled by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13-06-051 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 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jes Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217-6200.

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 an NPRM. The Coast Guard did not receive sufficient notice of the extended need to remove the power line on the Tacoma Narrows Bridge. 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 power line removal on the Tacoma Narrows Waterway, WA. If normal notice and comment procedures were followed, this temporary rule

would not become effective until after the date of the event. For similar 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

The Coast Guard is establishing a temporary safety zone to ensure the safety of all persons and vessels transiting the Tacoma Narrows Waterway due to potential falling cable, or other falling objects. The safety zone is needed to protect watercraft and their occupants from the hazards associated with falling objects.

#### Discussion of Rule

This rule, for safety concerns, will control vessels, personnel and individual movements in a safety zone including the entire Tacoma Narrows Waterway, 100 yards North and South of the Tacoma Narrows power line project. The safety zone includes all waters within the Tacoma Narrows Waterway, Washington State, 100 yards North and South of a line from point 47° 17' 04.8" North, 122° 33' 03.6" West to 47° 16' 31.38" North, 122° 31' 48.24" West.

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. 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 the regulation would encompass a small area that should not significantly 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 et seq.), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include 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 and operators of vessels intending to transit this portion of the Tacoma Narrows Waterway during the time this regulation is in effect. The zone will not have a significant economic impact due to its short duration and 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 et seq.) 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

We have analyzed this temporary rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

#### 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

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that this Temporary Final 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Temporary Final Rule or options for compliance are encourage to contact the point of contact listed under FOR FURTHER INFORMATION CONTACT.

#### 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, 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. 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 record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations, 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. (PST) November 03, 2006 to 11:59 p.m. (PST) November 30, 2006 during periods in which power line removal work is being conducted above the waters of the Tacoma Narrows or unless sooner cancelled by the Captain of the Port, a temporary final rule §165.T13-035 is added to read as follows:

§165.T13-038 Safety Zone: Tacoma Narrows Waterway, 100 yards North and South of the Tacoma Narrows power line project, WA.

(a) Location. The following area is a safety zone: The 'safety zone includes all waters within the Tacoma Narrows Waterway, Washington State, 100 yards North and South of a line from point

47° 17' 04.08" North, 122° 33' 03.6" West to 47° 16' 31.38" North, 122° 31' 48.24" West.

(b) Regulations. In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel may enter or remain in this safety zone, except for vessels involved in the investigation operations, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives.

(c) Enforcement Period. From 12:01 a.m. (PST) November 03, 2006 to 11:59 p.m. (PST) November 30, 2006 during periods in which power line installation work is being conducted above the waters of the Tacoma Narrows or unless sooner cancelled by the Captain of the Port.

DATED: \_\_\_\_\_

11/3/2006



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