

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.733(c)(1) to read as follows:

### § 117.733 New Jersey Intracoastal Waterway.

\* \* \* \* \*

(c) \* \* \*

(1) From December 1 through March 31, the draw need only open if at least four hours notice is given.

\* \* \* \* \*

Dated: December 9, 2008.

**Fred M. Rosa, Jr.,**

*Rear Admiral, United States Coast Guard,  
Commander, Fifth Coast Guard District.*

[FR Doc. E8–31016 Filed 12–29–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG–2008–1155]

### Drawbridge Operation Regulations; Gowanus Canal, Brooklyn, NY, Maintenance

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Hamilton Avenue Bridge across the Gowanus Canal, mile 1.2, at Brooklyn, New York. Under this temporary deviation the bridge shall require a four-hour advance notice for bridge openings for three months to facilitate bridge maintenance. Vessels that can pass under the draw without a bridge opening may do so at all times.

**DATES:** This deviation is effective from January 16, 2009 through March 31, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1155 and are available online at <http://www.regulations.gov>. They are also available for inspection 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 First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

**SUPPLEMENTARY INFORMATION:** The Hamilton Avenue Bridge, across the Gowanus Canal, mile 1.2, at Brooklyn, New York, has a vertical clearance in the closed position of 19 feet at mean high water and 23 feet at mean low water. The Drawbridge Operation Regulations are listed at 33 CFR 117.5.

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

The owner of the bridge, New York City Department of Transportation, requested a temporary deviation to facilitate the training of bridge personnel, mechanical and electrical testing at the bridge.

Under this temporary deviation the Hamilton Avenue Bridge shall require at least a four-hour advance notice for bridge openings from January 16, 2009 through March 31, 2009. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 15, 2008.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. E8–30880 Filed 12–29–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2008–1120]

**RIN 1625–AA00**

### Safety Zone; Flagler Museum New Year's Eve Celebration Fireworks Display, West Palm Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for

the Flagler Museum New Year's Eve Celebration fireworks display on the Intracoastal Waterway in West Palm Beach, Florida. This temporary safety zone will restrict vessels from interfering with the fireworks display. This regulation is necessary to provide for the safety of life on navigable waters of the United States and protect participants, spectators, and mariner traffic from potential hazards associated with the event.

**DATES:** This rule is effective from 11:55 p.m. on Wednesday, December 31, 2008 until 1 a.m. on Thursday, January 1, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1120 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–2008–1120 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying 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 Sector Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 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 LT Paul Steiner, Coast Guard Sector, Miami, Florida at (305) 535–8724. 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)(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 necessary to ensure the safety of commercial and recreational vessels in the vicinity of the

fireworks display on the dates and times this rule will be in effect and delay would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

For the same reasons above, 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**

Fireworks by Grucci is sponsoring the Flagler Museum New Year's Eve Celebration fireworks display. The fireworks display event will be held between the hours of 11:55 p.m. on Wednesday, December 31, 2008 and 1 a.m. on Thursday, January 1, 2009. The public is invited to attend. The approximate positions for the two fireworks display barges are 26°42'34" N, 080°02'50" W and 26°42'33" N, 080°02'47" W. The high concentration of event participants, spectators, and the general boating public presents an extra hazard to the safety of life on the navigable waters of the United States. A regulated area on the Intracoastal Waterway in West Palm Beach, Florida is necessary to protect participants as well as spectators from hazards associated with the event.

### **Discussion of Rule**

This rule establishes a temporary safety zone for the Flagler Museum New Year's Eve Celebration fireworks display in the Intracoastal Waterway in West Palm Beach, Florida. A 370-yard radius safety zone encompassing the waters surrounding the fireworks barges is necessary to protect participants as well as spectators from hazards associated with the fireworks display. The approximate positions for the two fireworks display barges are 26°42'34" N, 080°02'50" W and 26°42'33" N, 080°02'47" W. No person or vessel may anchor, moor, or transit a safety zone without permission of the Captain of the Port Miami, Florida or his designated representative. Traffic may resume normal operations at the completion of the event as determined by the Coast Guard Patrol Commander. This regulation will be in effect from 11:55 p.m. on Wednesday, December 31, 2008 to 1 a.m. on Thursday, January 1, 2009.

### **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 to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation will only be in effect for a short period of time and the impact on routine navigation is expected to be minimal.

### **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 affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the Intracoastal Waterway in West Palm Beach, Florida between 11:55 p.m. on Wednesday, December 31, 2008 and 1 a.m. on Thursday, January 1, 2009. This temporary 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 1 hour. Vessels may pass through the regulated area with the permission of the Coast Guard Patrol Commander.

### **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 affect 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 5100.1 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 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.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicates 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T07–1120 to read as follows:

### § 165.T07–1120 Safety Zone; Flagler Museum New Year's Eve Celebration fireworks display, West Palm Beach, Florida.

(a) *Regulated area.* A temporary safety zone is established for the Flagler Museum New Year's Eve Celebration fireworks display in West Palm Beach, Florida. The 370 yard radius safety zone encompasses the waters surrounding the fireworks barges. The approximate positions for the two fireworks display barges are 26°42'34" N, 080°02'50" W and 26°42'33" N, 080°02'47" W.

(b) *Definitions.* The following definitions apply to this section:

*Designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port Miami, Florida in the enforcement of regulated navigation areas, safety zones, and security zones.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor or transit a safety zone without permission of the Captain of the Port Miami, Florida or his designated representative. To request permission to enter into a safety zone, the Captain of the Port's designated representative may be contacted on VHF channel 16.

(2) At the completion of scheduled parade, and departure of participants from the regulated area, the Coast Guard Patrol Commander may permit traffic to resume normal operations.

(d) *Effective Dates.* This rule is effective from 11:55 p.m. on Wednesday, December 31, 2008 to 1 a.m. on Thursday, January 1, 2009.

Dated: November 28, 2008.

J.O. Fitton,

*Captain, U.S. Coast Guard, Captain of the Port, Miami, Florida.*

[FR Doc. E8–30878 Filed 12–29–08; 8:45 am]

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## DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS

### 33 CFR Part 323

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 232

[FRL–8757–7]

RIN 2040–AE96

## Revisions to the Clean Water Act Regulatory Definition of “Discharge of Dredged Material”; Final Rule

**AGENCIES:** U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) (together, the “Agencies”) are promulgating a final rule to amend a Clean Water Act (CWA) section 404 regulation that defines the term “discharge of dredged material.” This action conforms the Corps’ and EPA’s regulations to a court order invalidating the January 17, 2001, amendments to the regulatory definition (referred to as the “Tulloch II” rule). This final rule responds to the court decision by deleting language from the regulation that was invalidated.

**DATES:** *Effective Date:* December 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** For information on the final rule, contact Rachel Fertik of EPA at [Fertik.Rachel@epa.gov](mailto:Fertik.Rachel@epa.gov) or Jennifer McCarthy of the Corps at [jennifer.l.mccarthy@usace.army.mil](mailto:jennifer.l.mccarthy@usace.army.mil). For questions on project-specific activities, contact your local Corps District office. Addresses and telephone numbers for Corps District offices can be obtained