

assessment or an environmental impact statement.

#### **XV. Executive Order 13211, Energy Supply**

This proposed rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

#### **XVI. Executive Order 12630, Constitutionally Protected Property Rights**

This proposed rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

#### **XVII. Executive Order 12988, Civil Justice Reform Analysis**

This proposed rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The proposed rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

#### **XVIII. Summary of Proposed Changes**

The Department proposes to remove or amend the portions of §§ 531.52, 531.54, and 531.59 that impose restrictions on employers that pay a direct cash wage of least the Federal minimum wage and do not claim the section 3(m) tip credit. The proposed rule deletes the fourth sentence of section 531.52, which currently states that “[t]ips are the property of the employee whether or not the employer has taken a tip credit under section 3(m) of the FLSA.” The proposed rule also revises the fifth sentence of sections 531.52, the last sentence of section 531.54, and the final sentence of section 531.59(b) to remove language placing restrictions on an employer’s use of tips when that employer has not taken a tip credit while retaining language that reflects the statutory restrictions on an employer’s use of tips received by its employees when it does take a tip credit.

#### **List of Subjects in 29 CFR Part 531**

Employment, Labor, Minimum wages, Wages.

**Bryan L. Jarrett,**

*Acting Administrator, Wage and Hour Division.*

For the reasons set forth above, the Department proposes to amend Title 29,

part 531 of the Code of Federal Regulations as follows:

#### **PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938**

■ 1. The authority citation for part 531 continues to read as follows:

**Authority:** Sec. 3(m), 52 Stat. 1060; sec. 2, 75 Stat. 65; sec. 101, 80 Stat. 830; sec. 29(B), 88 Stat. 55, Pub. L. 93–259; Pub. L. 95–151, 29 U.S.C. 203(m) and (t); Pub. L. 104–188, 2105(b); Pub. L. 110–28, 121 Stat. 112.

■ 2. Revise § 531.52 to read as follows:

##### **§ 531.52 General characteristics of “tips.”**

A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, who has the right to determine who shall be the recipient of the gratuity. An employer that takes a tip credit is prohibited from using an employee’s tips for any reason other than that which is statutorily permitted in section 3(m): As a credit against its minimum wage obligations to the employee, or in furtherance of a valid tip pool. Only tips actually received by an employee as money belonging to the employee may be counted in determining whether the person is a “tipped employee” within the meaning of the Act and in applying the provisions of section 3(m) which govern wage credits for tips.

\* \* \* \* \*

■ 3. Revise the last sentence of § 531.54 to read as follows:

##### **§ 531.54 Tip pooling.**

\* \* \* However, an employer that takes a tip credit must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees’ tips for any other purpose.

■ 4. In § 531.59, revise the last sentence of paragraph (b) to read as follows:

##### **§ 531.59 The tip wage credit.**

\* \* \* \* \*

(b) \* \* \* With the exception of tips contributed to a valid tip pool as described in § 531.54, the tip credit provisions of section 3(m) also require employers that take a tip credit to permit employees to retain all tips received by the employee.

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#### **DEPARTMENT OF HOMELAND SECURITY**

#### **Coast Guard**

#### **33 CFR Part 165**

[Docket Number USCG–2017–0964]

RIN 1625–AA00

#### **Safety Zone; Oregon Inlet, Dare County, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the navigable waters of Oregon Inlet in Dare County, North Carolina in support of construction of the new Herbert C. Bonner Bridge. This temporary safety zone is intended to protect mariners, vessels, and construction crews from the hazards associated with installing the navigation span, and will restrict vessel traffic from the bridge’s navigation span as it is under construction by preventing vessel traffic on a portion of Oregon Inlet. Entry of vessels or persons into this safety zone is prohibited. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 20, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–2017–0964 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772–2221, email: [Matthew.I.Tyson@uscg.mil](mailto:Matthew.I.Tyson@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code  
COTP Captain of the Port

##### **II. Background, Purpose, and Legal Basis**

On October 10, 2017, the North Carolina Department of Transportation

notified the Coast Guard that they will be installing the navigation span of the new Herbert C. Bonner Bridge on January 8 through March 3, 2018, with alternate dates of March 4 through April 15, 2018. The construction will take place over an estimated 33 days during this period. A safety zone is proposed in Oregon Inlet within an area beginning at approximate position 35°46'23" N., 75°32'18" W., thence southeast to 35°46'18" N., 75°32'12" W., thence southwest to 35°46'16" N., 75°32'16" W., thence northwest to 35°46'20" N., 75°32'23" W., thence northeast back to the point of origin (NAD 1983) in Dare County, North Carolina. The construction involves crane barges on both sides of the navigation channel and various construction vessels and equipment. The COTP North Carolina has determined that potential safety hazards associated with the construction would be a concern for anyone transiting the Oregon Inlet navigation channel.

The purpose of this rule is to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone to be enforced from January 8 through March 3, 2018, with alternate dates of March 4 through April 15, 2018. Construction is expected to take place on 33 separate days during this period. The safety zone will be active for 2 hours each of those days, with the exact times announced via Broadcast Notices to Mariners at least 48 hours prior to enforcement. The safety zone will include all navigable waters of Oregon Inlet from approximate position 35°46'23" N., 75°32'18" W., thence southeast to 35°46'18" N., 75°32'12" W., thence southwest to 35°46'16" N., 75°32'16" W., thence northwest to 35°46'20" N., 75°32'23" W., thence northeast back to the point of origin, (NAD 1983). This zone is intended to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase. No vessel or person will be permitted to enter the safety zone during the designated times. The regulatory text we are proposing appears at the end of this document.

### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses

based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the proposed safety zone. Vessel traffic will not be allowed to enter or transit a portion of Oregon Inlet during specific two hour periods on 33 separate days from January 8 through March 3, 2018, with alternate dates of March 4 through April 15, 2018. The specific 2 hour period for each work day will be broadcast at least 48 hours in advance and vessels will be able to transit Oregon Inlet at all other times. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. This portion of Oregon Inlet has been determined to be a medium to low traffic area at this time of the year. This rule does not allow vessels to request permission to enter the safety zone covering the Oregon Inlet navigation channel during the designated times.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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 certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a

significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

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

#### D. Federalism and Indian Tribal Governments

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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves a safety zone lasting for 2 hours on 33 separate days that would prohibit entry into a portion of Oregon Inlet for bridge construction. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.ID. A preliminary Record of Environmental Consideration supporting this determination is 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 proposed rule.

### G. 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.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this

document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### 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 proposes to amend 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; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T05–0964 to read as follows:

#### § 165.T05–0964 Safety Zone; Oregon Inlet, Dare County, NC.

(a) *Location*. The following area is a safety zone: All navigable waters of Oregon Inlet, from approximate position 35°46'23" N., 75°32'18" W., thence southeast to 35°46'18" N., 75°32'12" W., thence southwest to 35°46'16" N., 75°32'16" W., thence northwest to 35°46'20" N., 75°32'23" W., thence northeast back to the point of origin (NAD 1983) in Dare County, NC.

(b) *Definitions*. As used in this section—

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard commissioned,

warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

*Captain of the Port* means the Commander, Sector North Carolina.

*Construction crews* means persons and vessels involved in support of construction.

(c) *Regulations*. (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) With the exception of construction crews, entry into or remaining in this safety zone is prohibited.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910–343–3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

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

(e) *Enforcement Period*. This regulation will be enforced from January 8 through March 3, 2018, with alternate dates of March 4 through April 15, 2018.

(f) *Public Notification*. The Coast Guard will notify the public of the specific two hour closures at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF–FM marine channel 16.

Dated: November 27, 2017.

**Bion B. Stewart,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R01–OAR–2017–0590; FRL–9971–59–Region 1]

### Air Plan Approval; Massachusetts; Logan Airport Parking Freeze

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a