

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 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 the 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 would not create an environmental risk to health or risk to safety that might 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. 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.

### 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 (32)(e), of the Instruction, from further environmental documentation. Under figure 2-1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

### List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); Section 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. Section 117.287(a)(1) is revised to read as follows:

### § 117.287 Gulf Intracoastal Waterway.

\* \* \* \* \*

(a-1) The draw of the Boca Grande Swingbridge, mile 34.3, shall open on signal; except that, from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour and half hour. On Saturday, Sunday and Federal holidays, from 7 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour and three quarter hour.

\* \* \* \* \*

Dated: February 13, 2004.

**Harvey E. Johnson, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[CGD01-04-007]

### Drawbridge Operation Regulations; Passaic River, NJ

**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 drawbridge operation regulations that govern the Route 280 (Stickel) Bridge, at mile 5.8, across the Passaic River at Harrison, New Jersey. This temporary deviation will allow the bridge to remain in the closed position from 8 a.m. to 4 p.m. on March 1, 2004. This action is necessary to facilitate scheduled maintenance at the bridge.

**DATES:** This deviation is effective from 8 a.m. to 4 p.m. on March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Kassof, Project Officer, First Coast Guard District, (212) 668-7165.

### SUPPLEMENTARY INFORMATION:

### Regulatory Information

The Route 280 (Stickel) Bridge has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. The existing regulations listed at 33 CFR 117.739(h), require the draw to open on signal after at least a twenty four hour advance notice is given.

The bridge owner, the New Jersey Department of Transportation, requested a temporary deviation from the

drawbridge operation regulations to facilitate scheduled maintenance, testing for hazardous materials, at the bridge.

Under this temporary deviation the bridge may remain in the closed position from 8 a.m. to 4 p.m., on March 1, 2004.

The bridge has not opened for vessel traffic during the past ten years.

This deviation from the drawbridge operation regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: February 17, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-04-019]

RIN 1625-AA00

#### **Safety Zone; Ice Conditions, Upper Potomac River, Upper Chesapeake Bay and Chesapeake & Delaware Canal, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone encompassing a portion of the upper Potomac River, upper Chesapeake Bay and Chesapeake & Delaware Canal. This safety zone is necessary to provide for the safety of life, property and to facilitate commerce. Due to the threat of ice to navigation, this safety zone imposes shaft horsepower, intake, and hull restrictions on vessels that are operating within the safety zone.

**DATES:** This rule is effective from January 25, 2004, to March 15, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-04-019 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226-1791, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Dulani Woods, Coast Guard Activities Baltimore, at (410) 576-2513.

## 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) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with ice conditions on the upper Potomac River, upper Chesapeake Bay, and Chesapeake & Delaware Canal.

### Background and Purpose

During a moderate or severe winter, frozen waterways present numerous hazards to vessels. Ice in a waterway may hamper a vessel's ability to maneuver, and could cause visual aids to navigation to be submerged, destroyed or moved off station. Ice abrasions and ice pressure could also compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach.

When ice conditions develop to a point where vessel operations become unsafe, it becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. Captains of the Port have the authority (33 CFR part 160, subpart B) to restrict and manage vessel movement by implementing a safety zone. The Captain of the Port Baltimore is establishing a safety zone on a portion of the upper Potomac River, upper Chesapeake Bay, and the Chesapeake & Delaware Canal that will restrict access to the Canal to only those vessels with steel hulls, keel hull coolers or upper and lower intake. Also, on the Chesapeake and Delaware Canal, access will be restricted to vessels with a minimum of 3000 total shaft horsepower.

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards due to ice conditions that become a threat to navigation. This rule establishes a safety zone encompassing a portion of the upper Potomac River bounded by the Harry W. Nice Bridge (US 301) the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge. This rule also establishes a safety zone encompassing a portion of the upper Chesapeake Bay, and the Chesapeake & Delaware Canal, from a line drawn between Swan Point and North Point and the Maryland and

Delaware state lines, near Chesapeake City, Maryland.

### Discussion of Temporary Final Rule

This rule limits access to the safety zone to those vessels authorized to enter and operate safely within the zone. Vessels not meeting the operating requirements established by this temporary rule will not be allowed to enter the safety zone. During an emergency situation, a vessel not meeting the operating requirements may obtain permission from the Captain of the Port Baltimore prior to entering the safety zone during the effective period. The Captain of the Port will notify the maritime community, via marine broadcasts, of the current ice conditions and the restrictions imposed under those conditions.

### 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

### 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.

This will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605 (b) of the regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant 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 process.