

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.

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 (1-888-743-3247).

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 this rule 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 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 concern 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 12211, 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 considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is 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 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; 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. Add temporary § 165.T05-019 to read as follows:

§ 165.T05-019 Safety zone; Ice Conditions, Upper Potomac River, Upper Chesapeake Bay, and Chesapeake & Delaware Canal, Maryland.

(a) *Location.* (1) The following area is a safety zone: All waters located on the upper Chesapeake Bay and Chesapeake and Delaware Canal, from a line drawn between Swan Point (located at position latitude 39°08'42" N, longitude 076°16'44" W) and North Point (located at position latitude 39°11'43" N, longitude 076°26'34" W) and the Maryland and Delaware state lines (located along longitude 075°46'46" W), near Chesapeake City, Maryland.

(2) All waters located on the upper Potomac River bounded by the Harry W. Nice Bridge (US 301) upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River.

(b) *Regulations.* (1) All vessels transiting the regulated area in the Upper Potomac River, except vessels with steel hulls are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(2) All vessels transiting the regulated area in the Upper Chesapeake Bay and the Chesapeake and Delaware Canal, except vessels with steel hulls, keel hull coolers or an upper and lower intake, and a minimum of 3000 total shaft horsepower are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(3) Coast Guard assets enforcing this safety zone can be contacted on VHF-FM marine band radio, channels 13 and 16. The Captain of the Port can be contacted on VHF-FM marine band radio channel 16 or at (410) 576-2693.

(c) *Definitions.*

Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Shaft horsepower means a measure of the actual mechanical energy per unit time delivered to a turning shaft.

Steel Hull vessel means only vessels with steel hulls.

(d) *Effective period.* This section is effective from January 25, 2004, to March 15, 2004.

Dated: January 25, 2004.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

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