

approval in a recent producer referendum. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order.

DATES: Comments are due on or before February 12, 2004.

FOR FURTHER INFORMATION CONTACT:

Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Room 2971—Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed action in conformance with Executive Order 12866.

This proposed termination has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the action.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed action will not have a significant economic impact on a substantial number of small entities. This rule would eliminate the regulatory impact of the order on dairy farmers and

regulated handlers. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

In the Western Federal milk order 550 of the 860 dairy producers (farmers), or 64 percent, whose milk was pooled under the order in June 2003 would meet the definition of small businesses. On the processing side, 15 of the 42 milk plants or 36 percent associated with the Western milk order during June 2003 would qualify as "small businesses".

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed action on small entities.

Proposed Termination of Rule

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination of the order regulating the handling of milk in the Western marketing area is being considered.

All persons who want to send written data, views, or arguments about the proposed termination should send two copies to the USDA/AMS/Dairy Division, Order Formulation and Enforcement Branch Room 2971—Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250-0231, by the 30th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 30 days because a longer period would not provide the time needed to complete the required procedures before the termination is to be effective.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would terminate the order regulating the handling of milk in the Western marketing area.

On August 8, 2003, the Department issued a tentative final decision on proposed amendments to the Western Federal milk order, which was published August 18, 2003 (68 FR 49375). The document was then followed by a referendum order for the Western marketing area to ascertain whether producers supplying that market approve the issuance of the proposed amended order.

The enabling statute requires that at least two-thirds of the producers (measured in terms of either number or volume) voting in a referendum must approve the issuance of an order before

it can be put into effect. Less than two-thirds percent of the voting producers in the referendum approved the issuance of the proposed amended order for the Western marketing area. In these circumstances, where it has been concluded that the order should be amended to effectuate the declared policy of the enabling statute and that the amended order was not approved by producers, it appears that continuation of the existing Western order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order.

The period for filing comments is limited to 30 days because a longer period would not provide the time needed to complete the required procedures before and coordinate the termination with amendatory action being taken on milk orders for neighboring markets.

List of Subjects in 7 CFR Part 1135

Milk marketing orders.

Authority: 7 U.S.C. 601-674.

Dated: January 7, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-689 Filed 1-12-04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-03-168]

RIN 1625-AA-09

Drawbridge Operation Regulation; Chincoteague Channel, Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commander, Fifth Coast Guard District, is proposing to change the regulations that govern the operation of the SR 175 drawbridge across the Chincoteague Channel, mile 3.5, at Chincoteague, Virginia. These regulations are necessary to facilitate public safety during the Annual Pony Swim. This proposed change to the drawbridge operation schedule will allow the Chincoteague Channel Bridge to remain in the closed position from 7 a.m. to 5 p.m. on the last Wednesday and Thursday in July of every year.

DATES: Comments and related material must reach the Coast Guard on or before March 15, 2004.

ADDRESSES: You may mail comments and related material to the Commander (oan-b), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23703-5004. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda L. Bonenberger, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6227.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-03-168), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Town of Chincoteague has requested a change from the current operating regulation set out in 33 CFR 117.5 that requires the drawbridge to open promptly and fully for the passage of vessels when a request to open is given.

The purpose of the change is to accommodate the Pony Swim across the Assateague Channel between

Assateague Island and Chincoteague Island that takes place every year on the last Wednesday and Thursday in July. The herd is owned by the Chincoteague Volunteer Fire Department and managed by the National Park Service. This annual event began in the 1700's, but in 1925 the Fire Department took over the event that is also referred to as the Chincoteague Volunteer Fireman's Carnival. The proceeds from the auctioning of the ponies provide a source of revenue for the fire company and it also serves to trim the herd's numbers. On Wednesdays, the ponies are led across the Assateague Channel from Assateague Island to Chincoteague where they are auctioned off. On Thursdays, the remaining ponies are led back across the channel to Assateague Island.

Due to the high volume of spectators that attend this yearly event, it is necessary to close the draw span on each of these days between the hours of 7 a.m. to 5 p.m. This will reduce vehicular traffic congestion and increase public safety on this small island as a result of drawbridge openings where the SR 175 bridge is the only access.

The proposed change would allow the Chincoteague Channel Bridge to remain in the closed position each year from 7 a.m. to 5 p.m. on the last Wednesday and Thursday of July.

Since the Pony Swim is a well-known annual event, and is publicly advertised, vessel operators can arrange their transits to minimize any impact caused by the closure. Vessel operators with mast heights lower than 15 feet still can transit through the fixed bridge across Chincoteague Channel during this event since only the bridge is closed and not the waterway. The Atlantic Ocean is the only alternate route for vessels with a mast height greater than 15 feet.

Discussion of Proposed Rule

We propose to change the current operating regulation set out in 33 CFR 117.5 that requires the drawbridge to open on demand for the passage of vessels when a request to open is given. A new section, 117.1005, would be inserted and allow the bridge to remain closed to vessel traffic from 7 a.m. to 5 p.m. on the last Wednesday and Thursday in July of every year.

Regulatory Evaluation

This proposed 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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This conclusion was based on the fact that the proposed change will have a very limited impact on maritime traffic transiting this area. Since the Chincoteague Channel will remain open to navigation during this event, mariners with mast height less than 15 feet may still transit through the bridge and vessels with mast height greater than 15 feet can use the Atlantic Ocean to the west or transit after the closed hours.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule would not have a significant economic impact on a substantial number of small entities because even though the rule closes the Chincoteague Channel bridge to mariners, those with mast heights less than 15 feet will still be able to transit through the bridge during the closed hours and mariners whose mast heights are greater than 15 feet will be able to use the Atlantic Ocean as an alternate route or transit after the closed hours.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1966 (Pub. L. 104-121), we want to assist small entities in understanding this proposed 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 Waverly

Gregory, Bridge Administrator, Fifth Coast Guard District, (757) 398-6222.

Collection of Information

This proposed 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 proposed 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 proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed rule meets applicable standards in section 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 proposed 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 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.

Energy Effects

We have analyzed this proposed 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 proposed 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 proposed rule is categorically excluded, under figure 2-1, paragraph (32)(e) of the Instruction, from further environmental documentation. Allowing the draw to remain closed for vessels at the times indicated on the last Wednesday and Thursday in July of every year would have no individually or cumulatively significant impact on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 the authority of Pub. L. 102-587, 106 Stat. 5039.

2. § 117.1005 is added to read as follows:

§ 117.1005 Chincoteague Channel.

The draw of the SR 175 bridge, mile 3.5 at Chincoteague need not open for the passage of vessels from 7 a.m. to 5 p.m. on the last Wednesday and Thursday in July of every year.

Dated: December 31, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-A173

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Three Threatened Mussels and Eight Endangered Mussels in the Mobile River Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed rule to designate critical habitat for 11 mussels in the Mobile River Basin under the Endangered Species Act of 1973, as amended (Act). The comment period is being reopened to provide notification to Clay, Elmore, Lee, and Lowndes Counties, Alabama, and to allow all interested parties another opportunity to comment on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted and will be fully considered in the final determination of the proposal.

DATES: The comment period is hereby reopened until January 23, 2004. We must receive comments on the proposal and draft economic analysis from all interested parties by the closing date. Any comments that we receive after the closing date will not be considered in the final rule.

ADDRESSES: Copies of the proposed designation and draft economic analysis are available on the Internet at <http://southeast.fws.gov/hotissues>, or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213; or by calling Mississippi Field Office, telephone 601/965-4900.