

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[CGD05-04-022]

RIN 1625-AA00

**Safety Zone; Chesapeake & Delaware Canal**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone encompassing the Chesapeake & Delaware Canal between Town Point Wharf and Reedy Point. This safety zone is necessary to provide for the safety of life and property and to facilitate commerce. This safety zone limits transits by imposing keel cooler or upper and lower intake restrictions on vessels operating within the safety zone due to the hazards to navigation created by the ice.

**DATES:** This rule is effective from January 27, 2004, to March 15, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-04-022 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

**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 an NPRM and for making this regulation effective less than 30 days after publication in the *Federal Register*. Publishing an NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners against the hazards associated with ice conditions on the Chesapeake & Delaware Canal. Record cold temperatures causing ice to form at a greater than normal rate made it impracticable and dangerous to mariners to delay publishing this safety zone.

**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-keel hull cooler or upper and lower intake equipped vessels would be exposed to a greater risk of loss of propulsion during the narrow transit through the C&D Canal, posing a risk of running aground.

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 Philadelphia is establishing a safety zone on the Chesapeake & Delaware Canal that will restrict access to the Canal to only those vessels with keel coolers or upper and lower intakes.

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 the Chesapeake & Delaware Canal between Town Point Wharf and Reedy Point.

**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 Philadelphia prior to entering the safety zone during the effective periods. 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.

This safety zone will protect mariners transiting the area from the potential hazards associated with ice in the Chesapeake & Delaware Canal during Ice Condition Two.

**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 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 rule 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 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 does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule does 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.ID, 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 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; 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.T05–022 to read as follows:

#### § 165.T05–022 Safety zone; Chesapeake & Delaware Canal.

(a) *Location.* The following area is a safety zone: All waters located on the Chesapeake & Delaware Canal between Town Point Wharf and Reedy Point.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(2) All vessels transiting the safety zone are required to be equipped with a keel cooler or both upper and lower intakes.

(3) All vessels transiting the safety zone are required to be steel hulled with a minimum of 3000 total shaft horsepower.

(4) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

#### (c) Definitions.

*Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

*Ice Condition Two* means the alert condition in which ice begins to form in the Upper Delaware River/Bay and the C&D Canal.

*Keel Cooler* means a circulation system that keeps hot water flowing through the sea chest to prevent freezing during the presence of hazardous ice conditions.

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

*Steel Hull vessel* means only vessels with steel hulls.

*Upper and Lower Intake* means the openings in a vessel that take in raw water to cool or heat machinery within the vessel. In order to insure vessel maintains propulsion, both upper and lower intakes are required during hazardous ice conditions.

(d) *Enforcement period.* This section will be enforced while Ice Condition Two exists during the effective period.

(e) *Effective period.* This section is effective from January 27, 2004 to March 15, 2004.

Dated: January 27, 2004.

**Jonathan D. Sarubbi,**

*Captain, U.S. Coast Guard, Captain of the Port Philadelphia.*

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**BILLING CODE 4910–15–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket No. FEMA–7825]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency