

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

[CGD05-05-008]

RIN 1625-AA00

**Safety Zone; Upper Chesapeake Bay and Its Tributaries and the C & D Canal, Maryland, Virginia, and Washington, DC****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in all navigable waters of the Captain of the Port Baltimore zone. This safety zone is necessary to protect mariners from the hazards associated with ice. The temporary safety zone restricts vessels from transiting the zone during ice season, unless authorized by the Captain of the Port Baltimore, Maryland or designated representative through the issuance of broadcast notice to mariners and marine safety information bulletins.

**DATES:** This rule is effective from January 24, 2005 until April 15, 2005. Comments must be received on or before March 9, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-05-008 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226-1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald L. Houck, Coast Guard Activities Baltimore, at (410) 576-2674.

**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**. While formation of ice generally occurs in the winter months, predicting when ice will begin to form, where it will be located and the thickness of the ice is difficult and depends on the weather conditions. Ice has just begun to form in the area of this safety zone. 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 and to ensure the safety of the environment on the Upper Chesapeake Bay and its tributaries.

**Request for Comments**

Although we did not publish a notice of proposed rulemaking, we encourage you to participate in this rulemaking by submitting comments and related materials.

If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-05-008), 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 8½ 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 rule in view of them.

**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. A safety zone is a tool available to the Captain of the Port (COTP) to restrict and manage vessel movement when hazardous conditions exist. The COTP Baltimore is establishing a safety zone within all navigable waters within the COTP Baltimore zone, which will restrict access to only those vessels meeting conditions specified in broadcast notice to mariners and marine safety information bulletins.

Ice generally begins to form in the Upper Chesapeake Bay and its tributaries, including the Chesapeake and Delaware (C & D) Canal, in late December or early January. During a moderate or severe winter, ice in navigable waters can become a serious problem, requiring the use of federal, state and private ice breaking resources. The Commander, Coast Guard Activities Baltimore will use its COTP authority to

promote the safe transit of vessels through ice-congested waters and the continuation of waterborne commerce throughout the winter season.

Ice fields in the Upper Chesapeake Bay and its tributaries move with prevailing winds and currents. Heavy ice buildups can occur in the C & D Canal, from Town Point Wharf to Reedy Point. Other areas that are commonly affected by high volumes of ice are, the Elk River, Susquehanna River, Patapsco River, Nanticoke River, Wicomico River, Tangier Sound, Pocomoke River and Sound, and the Potomac River. Once ice build up begins it can affect the transit of large ocean-going vessels.

Ice reports over the last several years have varied greatly on the Upper Chesapeake Bay and its tributaries. Historically, ice has been reported as NEW, FAST OR PACK ICE. The percentage of ice covering the river has been reported any where from 10% to 100%. The thickness has been reported any where from ½" to 18" thick.

**Discussion of Rule**

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 all waters of the COTP Baltimore zone. The COTP will notify the maritime community, via marine broadcasts, of the location and thickness of the ice as well as the ability of vessels to transit through the safety zone. Mariners allowed to travel through the safety zone with the permission of the COTP must maintain a minimum safe speed, in accordance with the Navigation Rules as seen in 33 CFR Chapter I, Subchapters D and E.

Ice Condition One means the emergency condition in which ice has largely covered the upper Chesapeake Bay and its tributaries, and the C & D Canal. Convoys are required and restrictions to shaft horsepower and vessel transit are imposed.

Ice Condition Two means the alert condition in which at least 2 inches of ice begins to form in the Upper Chesapeake Bay and its tributaries, and the C & D Canal. The COTP Baltimore may impose restrictions, including but not limited to, shaft horsepower and hull type restrictions.

Ice Condition Three means the readiness condition in which weather conditions are favorable for the formation of ice in the navigable waters of the Upper Chesapeake Bay and its tributaries, and the C & D Canal. Daily reports for the Coast Guard Stations and commercial vessels are monitored. (No

limitations on vessel traffic, hull type or shaft horsepower).

### 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. This rule does not require a general notice of proposed rulemaking and, therefore, it is exempt from the requirement of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

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 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.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 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, 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.T05–008 to read as follows:

**§ 165.T05–008 Safety zone; Upper Chesapeake Bay and its tributaries and the C & D Canal, MD, VA and Washington, DC.**

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Captain of the Port, Baltimore zone.

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

(1) All vessel traffic is prohibited in the safety zone unless they meet the requirements set forth by the Captain of the Port by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22A (157.1 MHz).

(2) 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 (410) 576–2693.

(3) All persons desiring to transit through the safety zone must contact the Captain of the Port at telephone number (410) 576–2693 or on VHF channel 13 or 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port Baltimore, MD or designated representative.

(4) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22A (157.1 MHz).

(5) Mariners granted permission to transit the safety zone must maintain the minimum safe speed necessary to maintain navigation as per 33 CFR Chapter I, Subchapters D and E.

(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.

Ice Condition One means the emergency condition in which ice has largely covered the Upper Chesapeake Bay and its tributaries, and the C & D Canal. Convoys are required and restrictions to shaft horsepower and vessel transit are imposed.

Ice Condition Two means the alert condition in which at least 2 inches of ice begins to form in the Upper Chesapeake Bay and its tributaries, and the C & D Canal. The COTP Baltimore may impose restrictions, including but not limited to, shaft horsepower and hull type restrictions.

Ice Condition Three means the readiness condition in which weather conditions are favorable for the formation of ice in the navigable waters of the Upper Chesapeake Bay and its tributaries, including the C & D Canal. Daily reports for the Coast Guard Stations and commercial vessels are monitored. (No limitations on vessel traffic, hull type or shaft horsepower).

(d) *Effective period.* This section is effective from January 24, 2005 until April 15, 2005.

Dated: January 24, 2005.

**Curtis A. Springer,**

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

[FR Doc. 05–2218 Filed 2–4–05; 8:45 am]

**BILLING CODE 4910–15–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 9**

[FRL–7869–5]

**OMB Approvals Under the Paperwork Reduction Act; Technical Amendment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas, Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes.

**EFFECTIVE DATE:** This final rule is effective February 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rudy Kapichak, State Measures and

Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, *kapichak.rudolph@epa.gov*, (734) 214–4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, *berry.laura@epa.gov*, (734) 214–4858.

**SUPPLEMENTARY INFORMATION:** EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes, which appeared in the **Federal Register** on July 1, 2004 (69 FR 40004). The affected regulations are codified at 40 CFR part 93. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

**I. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small