

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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0355 to read as follows:

§ 165.T08–0355 Safety Zone; Kanawha River, Charleston, WV.

(a) *Location.* The following area is a safety zone: All navigable waters of the Kanawha River from mile marker 58.1 to mile marker 59.1 near Haddad Riverfront Park, Charleston, WV.

(b) *Definitions.* *Designated representative* means a Coast Guard Patrol Commander (PATCOM), including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Ohio Valley (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* (1) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM.”

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or

signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area specified above, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) To seek permission to enter, contact the COTP or the COTP’s representative by VHF–FM marine radio channel 16 or phone at 1–800–253–7465. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(9) The COTP will provide notice of the regulated area through advanced notice via local notice to mariners and broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement periods.* (1) The safety zone described in paragraph (a) will be enforced from 8:45 p.m. through 10:15 p.m. on June 30, 2023, with a rain date of July 1, 2023, or July 2, 2023.

(2) The safety zone described in paragraph (a) will be enforced from 8:45 p.m. through 10:15 p.m. on July 4, 2023, with a rain date of September 4, 2023.

Dated: May 30, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0420]

RIN 1625–AA00

Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of life on these navigable waters at the old Governor Harry W.

Nice/Senator Thomas “Mac” Middleton Memorial (US–301) Bridge during demolition operations from June 10, 2023 through July 14, 2023. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from June 7, 2023, through July 14, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0420 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BM1 Michael Klopp, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2674, email MDNCRWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On May 18, 2023, Skanska-Corman-McLean, Joint Venture, notified the Coast Guard that the company will be conducting bridge demolition operations at the old Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US–301) Bridge. The work described by the contractor requires the use of explosives, and debris removal and hydrographic surveying equipment. During explosive detonation periods, there can be no marine traffic transiting near or around the bridge for safety reasons. On April 13, 2023, the Coast Guard was notified that the explosive demolition of the steel trusses would be completed no later than June 9, 2023. However, the contractor reported that due to inclement weather and explosive supply, they now anticipate being completed no later than July 14, 2023.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good

cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. Demolition operations involving explosives will occur at the old Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge across the Potomac River and immediate action is needed to respond to the potential safety hazards associated with bridge demolition. Hazards from the demolition operations include low-hanging or falling ropes, cables, large piles and cement cast portions, dangerous projectiles, and/or other debris. We must establish this safety zone by June 10, 2023, to guard against these hazards.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with demolition operations at the old Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) has determined that potential hazards associated with bridge demolition starting June 10, 2023, will be a safety concern for anyone near the old Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge demolition site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being demolished.

IV. Discussion of the Rule

The COTP is establishing a safety zone from 12:01 a.m. on June 10, 2023, to 11:59 p.m. on July 14, 2023. The safety zone will cover the following areas:

Area 1. All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′38.74″ N, 077°00′52.99″ W, thence east to 38°21′52.67″ N, 076°59′2.51″ W, thence south along the shoreline to 38°21′43.45″ N, 076°58′56.64.22″ W, thence west to 38°21′28.91″ N,

077°00′52.81″ W, and thence north along the shoreline back to the beginning point, located in King George County, VA.

Area 2. All navigable waters of the Potomac River, within 1,500 feet of the explosives barge located in approximate position 38°21′21.47″ N, 076°59′45.40″ W.

The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled demolition and debris removal. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The term designated representative also includes an employee or contractor of Skanska-Corman-McLean, Joint Venture for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

The COTP will notify the affected segments of the public by all appropriate means, as provided at 33 CFR 165.7(a), of the establishment of the safety zone. Such means of notification will include, but will not be limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location and time of year of the safety zone. The temporary safety zone is approximately 3000 yards in width and 350 yards in

length. This safety zone would impact a small designated area of the Potomac River for 35 total days, but we anticipate that there would be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. During explosive detonations, the Coast Guard will have law enforcement assets on-scene to enforce the safety zone immediately before, during and after explosive detonations. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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.

E. 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 (adjusted for inflation) 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 this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 35 total days that would prohibit entry within a portion of the Potomac River. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T05-0420 to read as follows:

§ 165.T05-0420 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) *Location.* The following areas are safety zones. These coordinates are based on North American Datum of 1983 (NAD 83).

(1) *Area 1.* All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'38.74" N, 077°00'52.99" W, thence east to 38°21'52.67" N, 076°59'2.51" W, thence south along the shoreline to 38°21'43.45" N, 076°58'56.64.22" W, thence west to 38°21'28.91" N, 077°00'52.81" W, and thence north along the shoreline back to the beginning point, located in King George County, VA.

(2) *Area 2.* All navigable waters of the Potomac River within 1,500 feet of the explosives barge located in approximate position 38°21'21.47" N, 076°59'45.40" W.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone. The term also includes an employee or contractor of Skanska-Corman-McLean, Joint Venture for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

Marine equipment means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, except for marine equipment, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP, Skanska-Corman-McLean, Joint Venture, or the COTP's designated representative. If a vessel or person is notified by the COTP, Skanska-Corman-McLean, Joint Venture, or the COTP's designated representative that they have entered the safety zone without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners requesting to transit any of the safety zone areas in paragraph (a) of this section must first contact the Skanska-Corman-McLean, Joint Venture designated representative, the on-site project manager by telephone number 781-953-1465 or on Marine Band Radio VHF-FM channels 13 and 16 from the pusher tug Miss Stacy. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, Skanska-Corman-McLean, Joint Venture, or designated representative to the mariner regarding the conditions of entry to and exit from any area of the safety zone. The COTP or the COTP's representative can be contacted by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcasts on VHF-FM marine band radio announcing specific enforcement dates and times.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 12:01 a.m. on June 10, 2023, to 11:59 p.m. on June 14, 2023.

Dated: June 1, 2023.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2023-12169 Filed 6-6-23; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Parts 3006 and 3011

[Docket No. RM2023-6; Order No. 6530]

RIN 3211-AA35

Non-Public Materials

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts amendments to rules relating to non-public materials and the Freedom of Information Act (FOIA).

DATES: Effective July 7, 2023.

ADDRESSES: For additional information, Order No. 6530 can be accessed electronically through the Commission's website at <https://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. Basis and Purpose of Final Rules
- III. Final Rules

I. Background

On March 3, 2023, the Commission issued a notice of proposed rulemaking that proposed amendments to its rules to exempt non-public materials submitted to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) from the rules in 39 CFR part 3011, and amendments to certain rules pertaining to FOIA requests in 39 CFR part 3006.¹ The

Commission initiated Docket No. RM2023-6 to consider the proposed amendments to 39 CFR parts 3006 and 3011, invited interested persons to submit comments, and appointed a Public Representative. Order No. 6451 at 19. On April 6, 2023, the Commission received comments filed by four parties: the Postal Service,² the U.S. Chamber of Commerce (COC),³ the Lexington Institute (LI),⁴ and the Public Representative.⁵

II. Basis and Purpose of Final Rules

All four commenters support the amendments proposed in Order No. 6451. *See* Postal Service Comments at 2; COC Comments at 2; LI Comments at 2; PR Comments at 1. In addition to supporting the proposed amendments, they have various suggestions for the Commission to consider for the final rules. After reviewing the comments, the Commission adopts the amended rules as proposed in Order No. 6451, with revisions in the final § 3006.30(e) to provide greater clarity with respect to the procedures for FOIA requests for records submitted by a person other than the Postal Service.

The Postal Service suggests that the Commission expand the scope of the final rules beyond the 39 U.S.C. 407(b)(2)(A) context to include non-public materials submitted to the Commission in Executive Branch interagency deliberations generally and in proceedings to which the Commission's *ex parte* rules do not apply. Postal Service Comments at 3-7. The Commission declines to do so because Postal Service's suggested expansion is beyond the scope of this rulemaking. The scope of this rulemaking as articulated throughout Order No. 6451 is narrowly focused on the non-public materials provided to the Commission in connection with the coordination activities under 39 U.S.C. 407(b)(2)(A). The Commission notes it could further amend the regulations in the future if necessary, and notes that any interested person may file a petition requesting that the Commission consider such a rule change. 39 CFR 3010.201(b)(1).

The Public Representative suggests that there may be less formal circumstances in the 39 U.S.C. 407(b)(2)(A) context, in which non-

public materials could be construed as being informally requested by the Commission from the Postal Service, a scenario that the proposed rulemaking does not cover. PR Comments at 5. The Commission notes her concern is hypothetical in nature and she does not present any concrete improvement in the final rules. The Commission further takes note of her suggestion that the Commission could further amend the regulations in the future if necessary. *See id.* at 5.

COC suggests that the Postal Service is not a participant in the coordination activities under 39 U.S.C. 407(b)(2)(A) (in contrast with their participation in the liaison activities under 39 U.S.C. 407(b)(2)(D)) and no materials submitted by the Postal Service can be considered to be 39 U.S.C. 407(b)(2)(A) materials. COC Comments at 2-3. The Commission declines to consider this issue in this docket. Potential distinctions between 39 U.S.C. 407(b)(2)(A) and 39 U.S.C. 407(b)(2)(D) are issues beyond the scope of this rulemaking, and adopting the Commission's proposal does not rest upon differentiating between them. Regardless, the Commission reiterates that its proposal (and the underlying legal authority and rationale articulated for adopting it) encompass materials provided to the Commission *in connection with* activities under 39 U.S.C. 407(b)(2)(A). *See generally* Order No. 6451. Accordingly, the Commission rejects the narrow interpretation that the proposed rules should not apply to any materials submitted by the Postal Service to the Commission *in connection with* the coordination activities under 39 U.S.C. 407(b)(2)(A).

COC and LI both raise concerns for the possibility of decreased transparency. COC Comments at 4; LI Comments at 2. The Commission notes that their concern is hypothetical in nature at this time. In addition, they do not specify any information or materials that are transparent now under existing rules but would no longer be transparent when the proposal is implemented. Moreover, they do not suggest any concrete rule changes to address their transparency concern. The Commission believes that the crucial and present need to ensure the free flow of information in the interagency deliberative process outweighs any hypothetical reduced transparency. In addition, the pathway through FOIA requests under 39 CFR part 3006 remains open. Finally, proposed § 3011.100(c)(3) provides that if any non-public materials submitted to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) are also provided via one of the

¹ Notice of Proposed Rulemaking Regarding Materials Provided to the Commission in Connection With Activities Under 39 U.S.C. 407(b)(2)(A), March 3, 2023, at 2 (Order No. 6451).

² Comments of the United States Postal Service, April 6, 2023 (Postal Service Comments).

³ Comments of U.S. Chamber of Commerce, April 6, 2023 (COC Comments).

⁴ Comments of the Lexington Institute, April 6, 2023 (LI Comments).

⁵ Public Representative's Comments Concerning Notice of Proposed Rulemaking, April 6, 2023 (PR Comments).