

advance notice to open the bridge from November 1 to March 31, from midnight to 8 a.m. Review of MDOT's bridge logs from 1993 to 1997 reveals a total of 29 bridge openings for the five year period during the months from November 1 through March 31, an average of 1.2 openings per month. Due to the low number of openings that have occurred during the November through March time period, we believe this change will not unduly restrict navigation.

#### Discussion of Comments and Changes

The Coast Guard received no comments on the NPRM. Since no comments were received and we believe the change is warranted based on our findings, the final rule is being implemented without change.

#### Regulatory Evaluation

This 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 Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to adhere to the new operation procedures during transits of the bridge.

#### 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. 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. This conclusion is based on the fact that this rule will only effect drawbridge openings during periods of little or no usage by vessel operators.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them

and participate in the rulemaking process. This was accomplished through the solicitation of comments from local waterway users and marinas during a Coast Guard conducted field study, and through publication of the NPRM in the **Federal Register** in which comments were solicited.

#### 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

We have analyzed this rule under Executive Order 12612, and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

#### Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under E.O. 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.

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (32)(e) of Commandant

Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule only deals with the operating schedule of an existing drawbridge and will have no impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulation

For the reasons discussed in the preamble, the Coast Guard amends 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; 49 CFR 1.46; 33 CFR 1.05-1(g); Section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Add § 117.570 to read as follows:

#### § 117.570 Sassafras River.

The draw of the Sassafras River (Route 213) bridge, mile 10.0 at Georgetown, Maryland, shall open on signal; except that from November 1 through March 31, from midnight to 8 a.m., the draw need only open if at least a six-hour advance notice is given.

Dated: October 27, 1999.

**Thomas E. Bernard,**

*Captain, U. S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

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#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 117

[CGD05-99-003]

RIN 2115-AE47

#### Drawbridge Operation Regulations; Miles River, Easton, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations that govern the operation of the Maryland Route S370 drawbridge across the Miles River, Mile 10.0, at Easton, Maryland. This change will restrict drawbridge openings from November 1 through March 31, 24 hours a day, and from April 1 through October 31, from 6 p.m. to 6 a.m., by requiring a six-hour advance notice for

drawbridge openings. At all other times the bridge will open on demand. This new rule will eliminate the need to have the bridge constantly manned during times of minimal use while still providing for the reasonable needs of navigation.

**DATES:** This rule is effective December 10, 1999.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-99-003 and are available for inspection or copying at the office of the Commander (AOWB), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 757-398-6222.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On May 14, 1999, we published a Notice of Proposed Rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Miles River, Easton, MD" in the **Federal Register** (64 FR 26350). We received no letters commenting on the Proposed Rule. No public hearing was requested, and none was held.

**Background and Purpose**

33 CFR 117.565 currently requires the draw of the S370 Miles River Bridge, mile 10.0 at Easton, to open on signal from sunrise to sunset. A vessel wishing to pass through the draw from sunset to sunrise must notify the drawtender of the time at which it is desired to pass and the draw must open as close to the time requested as practicable.

The Maryland Department of Transportation, State Highway Administration, requested that we change the opening schedule of this bridge by requiring a six-hour advance notice for drawbridge openings, from November 1 through March 31, 24 hours a day, and from April 1 through October 31, from 6 p.m. to 6 a.m. At all other times the bridge will open on demand. This change was requested to better establish the times the bridge will open on demand and to eliminate the need for a drawtender during times when there are a minimal number or no bridge openings. The Maryland Department of Transportation provided draw logs that showed the drawbridge had opened 4 times in two years from November 1 through March 31. The logs also clearly showed a reduced number of drawbridge openings from April 1

through October 31 between the hours of 6 p.m. and 6 a.m. The Coast Guard conducted a field study of the local marinas and waterway users in the area of the drawbridge. No adverse comments were received during the field study. This bridge is located in a rural upriver location with little or no nighttime navigation.

**Discussion of Comments and Changes**

The Coast Guard received no comments on the NPRM. Since no comments were received and we believe the change is warranted based on our findings, the final rule is being implemented without change.

**Regulatory Evaluation**

This 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 Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to adhere to the new operation procedures for notice before transits of the bridge.

**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. 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. This conclusion is based on the fact that this rule will only affect drawbridge openings during periods of little or no usage by vessel operators, and it clarifies the hours when the bridge must open on signal for both the bridge owner and vessel operators.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they

could better evaluate its effects on them and participate in the rulemaking process. This was accomplished through solicitation of comments from local waterway users and marinas during a Coast Guard conducted field study, and through publication of the NPRM in the **Federal Register** in which comments were solicited.

**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**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandate Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 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.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further

environmental documentation. This rule only deals with the operating schedule of an existing drawbridge and will have no impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

For the reasons discussed in the preamble, the Coast Guard amends 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; 49 CFR 1.46; 33 CFR 1.05-1(g); Section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Revise § 117.565 to read as follows:

#### § 117.565 Miles River.

The draw of the Route S370 bridge, mile 10.0 at Easton, Maryland, shall open on signal; except that from November 1 through March 31, 24 hours a day, and from April 1 through October 31, from 6 p.m. to 6 a.m., a six-hour advance notice to the drawtender is required for bridge openings.

Dated: October 27, 1999.

**Thomas E. Bernard,**

*Acting Captain, U. S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

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#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

[CGD 13-98-023]

RIN 2115-AE84

#### Regulated Navigation Area; Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard, after consultation with the Department of Justice, Department of Interior and the Department of Commerce, is revising the Interim Rule and adopting it as final. The Coast Guard is establishing a permanent Regulated Navigation Area (RNA) along the northwest Washington coast and in a portion of the entrance of

the Strait of Juan de Fuca. The final RNA covers a broader geographic area than the interim rule and also changes the amount of time of the SECURITE notice from one hour to one half hour prior to whale hunting operations. The RNA will reduce the danger to life and property in the vicinity of Makah whale hunt activities. Within the RNA, a moving exclusionary zone (MEZ) around a Makah whale hunt vessel may be in effect during actual whale hunt operations.

**DATES:** This final rule is effective November 10, 1999.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 13-98-023 and are available for inspection or copying at Thirteenth Coast Guard District (m), RM 3506, 915 Second Avenue, Seattle, WA 98174, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thirteenth District Marine Safety Division (m), United States Coast Guard (206) 220-7210.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On July 22, 1998, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area, Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting" in the **Federal Register** (63 FR 39256). On October 1, 1998, we published an interim rule entitled "Regulated Navigation Area, Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting" in the **Federal Register** (63 FR 52603) No public hearing was held.

Migrating gray whales are expected in the RNA after November 1, 1999. An early effective date for this rule will help ensure safety of persons and property at sea should whale hunting operations commence during November in the expanded RNA. While the size of the RNA is expanded by the final rule, the size of the MEZ is unchanged. The Coast Guard did not receive the results of the environmental consultations in time to allow for a delayed effective date after publication. For these reasons, the Coast Guard finds good cause, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication.

#### Background and Purpose

The Makah Tribe has a federally recognized treaty right to hunt whales in their usual and accustomed fishing area

off the northwest coast of Washington and in the entrance of the Strait of Juan de Fuca. Several hunts were initiated, but did not result in a whale being taken, in significant part to interference caused by boaters near the tribal hunt vessels. A whale hunt was completed on May 17, 1999 using a harpoon and a .50 caliber rifle, fired from a small boat. These experiences established that an MEZ reduces the dangers to persons and vessels in the vicinity of whale hunting activities. The uncertain reactions of a pursued or wounded whale and the inherent dangers in firing a hunting rifle from a pitching and rolling small boat are likely to be present in all future hunts, and present a significant danger to life and property if persons and vessels are not excluded from the immediate vicinity of a hunt.

#### Discussion of Comments and Changes

The Coast Guard received a total of 49 comments after publication of the interim rule. The comments included letters from 10 organizations, 1 federal agency, the Makah tribe, and 1 petition with multiple signatures. Responses to these comments and changes made in the interim rule are discussed in the following paragraphs.

Several comments objected to the taxpayer expense involved in implementing this rule. One suggested that the costs associated with enforcement of the RNA be borne by the Makah Tribe, not with federal funds. RNAs, safety zones and limited access areas are enforced nationwide using the Coast Guard's operating expense account. For example, a city fireworks display often requires a safety zone around it and federal funds are expended in implementing and enforcing such zones. Moreover, the creation of an RNA does not require that the Coast Guard be on scene for the rule to be in effect; the Coast Guard has the discretion to place units on scene with or without a rule.

A frequent comment was that the RNA violated first amendment rights. Generally, these comments raised the concern that the 500 yard MEZ distance prevents appropriate documentation and recording of an event that is of significant public interest. One comment suggested that the Coast Guard implement a system of observers pooled from the media and non-government agencies to witness the whale hunt from Coast Guard assets. The Coast Guard recognizes that there is a public interest in the media recording and documenting this event. The interim rule allowed a single press pool vessel within the MEZ subject to certain restrictions. Requiring other members of