

investigation which may impede those actions or investigations; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others.

(B) *Subsection (c)(4), (d)(3) and (4).* These subsections are inapplicable to the extent that an exemption is being claimed from subsections (d)(1) and (2).

(C) *Subsection (e)(1).* In the collection of information for investigatory or law enforcement purposes, it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required disciplinary and prosecutorial determinations. Additionally, records within this system may be properly classified pursuant to executive order. Accordingly, application of exemptions (j)(2), (k)(1) and (k)(2) may be necessary.

(D) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations. Collection of information only from the individual accused of criminal activity or misconduct could also subvert discovery of relevant evidence and subvert the course of justice. Accordingly, application of exemption (j)(2) may be necessary.

(E) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(F) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent an exemption is claimed from subsections (d)(1) and (2).

(G) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. Accordingly,

application of exemptions (j)(2), (k)(1), and (k)(2) may be necessary.

(H) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to maintain an accurate record of the investigatory activity to preserve the integrity of the investigation and satisfy various Constitutional and evidentiary requirements, such as mandatory disclosure of potentially exculpatory information in the investigative file to a defendant. It is also necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined through judicial processes. Accordingly, application of exemption (j)(2) may be necessary.

(I) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(J) *Subsection (f).* The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly, application of exemptions (j)(2), (k)(1), and (k)(2) may be necessary.

(K) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

\* \* \* \* \*

Dated: May 6, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022-10127 Filed 5-10-22; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2022-0330]

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 persons, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge, which will occur from May 16, 2022, through June 18, 2022. 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 7 a.m. on May 16, 2022, through 8 p.m. on June 18, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0330 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 Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2674, email [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port

DHS Department of Homeland Security

FR Federal Register

§ Section

TFR Temporary final rule

U.S.C. United States Code

#### II. Background Information and Regulatory History

On April 21, 2022, Skanska-Corman-McLean, Joint Venture notified the Coast Guard that the company will be setting pier protection fender ring

precast segments adjacent to the Federal navigation channel at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge. Details of the operation were provided to the Coast Guard on April 27, 2022. A total of ten pier protection fender ring precast segments are to be set at two pier protection fender rings, which are located on each side of the Federal navigation channel. The setting of these segments is required to complete the construction of the bridge pier protection. The setting of each precast segment will require a minimum of two days and will be conducted between 7 a.m. and 8 p.m. from May 16, 2022, to June 18, 2022. The setting of four of the ten precast segments, two segments at each pier protection fender ring, described by the contractor does not require placing equipment within the Federal navigation channel.

The setting of six of the ten precast segments, three segments at each pier protection fender ring, described by the contractor requires the movement in and anchoring at multiple points of a large crane barge within the Federal navigation channel. This crane can accommodate all of the 250-ton fender ring precast segments to be hoisted and placed precisely. The required sequence of the work involved means that heavy lift operations conducted from within the Federal navigation channel will not be completed continuously. On days when this work will be conducted, the large crane barge will be required to remain within the Federal navigation channel between 8 p.m. and 7 a.m., which will streamline the operation by avoiding the more than four hours it takes to demobilize and transport the large crane barge and its associated anchoring equipment, thereby reducing the time in the channel by several days. This operation will impede vessels requiring the use of the channel.

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 doing so would be impracticable and contrary to the public interest. Construction operations involving large crane heavy lifts at the new Governor Harry W. Nice/

Senator Thomas “Mac” Middleton Memorial (US-301) Bridge must occur within the Federal navigation channel. Immediate action is needed to respond to the potential safety hazards associated with bridge construction. Hazards from the construction operations include low-hanging or falling ropes, cables, large cement cast portions, dangerous projectiles, and/or other debris. We must establish this safety zone by May 16, 2022, 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 construction operations at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge to be conducted within the Federal navigation channel.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with bridge construction starting May 16, 2022 will be a safety concern for anyone within the Federal navigation channel at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial (US-301) Bridge construction 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 constructed.

### IV. Discussion of the Rule

This rule establishes a temporary safety zone from 7 a.m. on May 16, 2022, through 8 p.m. on June 16, 2022. The safety zone will cover all navigable waters of the Potomac River encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.00" N, 076°59'34.90" W, thence north to 38°21'48.90" N, 076°59'36.80" W, and east back to the beginning point located between Charles County, MD, and King George County, VA.

The duration of the zone is intended to protect personnel and the marine environment in these navigable waters while pier protection fender ring precast segments are being set at the new Governor Harry W. Nice/Senator Thomas “Mac” Middleton Memorial

(US-301) Bridge. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Maryland-National Capital Region or a designated representative.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification will also include, but are not 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 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

### 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 size of the safety zone. The temporary safety zone is approximately 450 yards in width and 270 yards in length. This safety zone will impact a small designated area of the Potomac River for 34 days, but we anticipate that there will 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. Vessel traffic, including recreational vessels, not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east or the west of the Federal

navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east and west. 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 received no comments from the Small Business Administration on this rulemaking. 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 temporary 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 temporary safety zone lasting 34 total days that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) 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; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

- 2. Add § 165.T05–0330 to read as follows:

#### § 165.T05–0330 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) **Location.** The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96"N, 076°59'22.04"W, thence south to 38°21'43.08"N, 076°59'20.55"W, thence west to 38°21'41.00"N, 076°59'34.90"W, thence north to 38°21'48.90"N, 076°59'36.80"W, and east back to the beginning point, located between Charles County, MD, and King George County, VA. These coordinates are based on datum NAD 83.

(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 Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

*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 or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(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.* The section will be enforced from 7 a.m. on May 16, 2022, through 8 p.m. on June 18, 2022.

Dated: May 5, 2022.

**David E. O'Connell,**

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

[FR Doc. 2022-10093 Filed 5-10-22; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 107 and 190

[Docket No. PHMSA-2021-0119]

RIN 2137-AF58

### Administrative Rulemaking—Criminal Referrals

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** PHMSA is incorporating within its regulations language noting its employees' ability to refer actual or possible criminal activity in connection with PHMSA's jurisdictional statutes directly to the DOT Office of Inspector General (OIG).

**DATES:** Effective May 11, 2022.

#### FOR FURTHER INFORMATION CONTACT:

Jeremy Henowitz, Attorney-Advisor, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave.

SE, Washington, DC 20590,  
*Jeremy.Henowitz@dot.gov.*

#### SUPPLEMENTARY INFORMATION:

##### I. Background

PHMSA regulations governing its hazardous materials safety and pipeline safety programs provide for referral of actual or possible criminal violations of the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), Pipeline Safety Act (49 U.S.C. 60101 *et seq.*), and orders or regulations issued thereunder, to law enforcement personnel. Specifically, 49 CFR 107.335 and 190.293 contemplate that employees will report such activity through internal channels, with the PHMSA Office of Chief Counsel thereafter directing allegations to the Department of Justice (DOJ). PHMSA regulations are silent regarding whether employees may bring criminal referrals directly to OIG.

OIG concluded in an August 22, 2018, audit report<sup>1</sup> that DOT and its Operating Administrations' policies governing employee referrals of actual or possible criminal activity to OIG were dated, and that some Operating Administration policies may in fact hinder such referrals to OIG. OIG recommended updating pertinent DOT Orders regarding an employee's ability to refer criminal activity to OIG, followed by each Operating Administration aligning their procedures with those updated DOT Orders.

DOT issued Order 8000.8A<sup>2</sup> to implement OIG's recommendation. DOT Order 8000.8A built on language within predecessor DOT Order 8000.8 and DOT Order 8000.5A regarding employees reporting criminal activity through internal channels, by stating explicitly that DOT "[e]mployees also have the option of making a direct referral to the Inspector General." PHMSA has also updated pertinent agency procedures<sup>3</sup> to align with those revisions introduced in DOT Order 8000.8A.

In parallel with updating pertinent procedures, PHMSA is updating

<sup>1</sup> DOT OIG, No. ST2018076, "DOT Operating Administrations Can Better Enable Referral of Potentially Criminal Activity to OIG" (Aug. 22, 2018) (OIG Report).

<sup>2</sup> DOT, Order No. 8000.8A, "Office of Inspector General Investigative Responsibilities," at 6(c) (Nov. 20, 2020).

<sup>3</sup> Specifically, PHMSA Office of Hazardous Materials Safety, "Inspection, Investigation and Enforcement Manual Version 2.1," available at <https://www.phmsa.dot.gov/field-operations/operational-guidance/inspection-investigation-and-enforcement-manual-version-21> (update forthcoming) and PHMSA Office of Pipeline Safety, "Pipeline Safety Enforcement Procedures," available at <https://www.phmsa.dot.gov/pipeline/enforcement/pipeline-enforcement-procedures> (last accessed Apr. 11, 2022).

provisions in its regulations governing criminal referrals through this rulemaking. The revised language in §§ 107.335 and 190.293 clarifies that PHMSA employees may directly refer actual or possible criminal activity to OIG through its hotline accessible by telephone, email, physical mail, or OIG's website (<https://www.oig.dot.gov/fraud-hotline>). PHMSA expects that these amendments to its regulations will increase transparency, accountability, reduce waste, fraud, and abuse, and are in line with PHMSA's mission to assure safe transportation of energy and hazardous materials.

##### II. Issuance of a Final Rule

DOT is publishing this final rule without notice and comment and with an immediate effective date. The Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*) does not require notice and comment procedures for rulemakings establishing rules governing "matter[s] relating to agency management or personnel." 5 U.S.C. 553(a)(2). Here, the language being added to the regulations concerns internal PHMSA procedures regarding employees' direct referral of actual or possible criminal activity to OIG.

##### III. Regulatory Analyses and Notices

###### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 ("Regulatory Planning and Review")<sup>4</sup> and DOT Order 2100.6A ("Rulemaking and Guidance Procedures"); therefore, the final rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

###### B. Regulatory Flexibility Analysis

PHMSA has determined the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*) does not apply to this rulemaking. The RFA applies, in pertinent part, only when "an agency is required . . . to publish general notice of proposed rulemaking." 5 U.S.C. 604(a).<sup>5</sup> The Small Business Administration's "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act" (2017), explains that:

If, under the APA . . . the agency is required to publish a general notice of

<sup>4</sup> 58 FR 51735 (Oct. 4, 1993).

<sup>5</sup> Under 5 U.S.C. 603(a), the RFA also applies when an agency "publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States." However, this rule does not involve the internal revenue laws of the United States.