

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

Bridges.

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. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. From 8 a.m., December 19, 2001, through 8 a.m., March 11, 2002, § 117. T392 is added to read as follows:

**§ 117.T392 Upper Mississippi River.**

*Rock Island Railroad and Highway Drawbridge Mile 482.9 Upper Mississippi River.*

From 8 a.m. (CST), December 19, 2001 through 8 a.m. (CST), March 11, 2002, the drawspan is allowed to be maintained in the closed to navigation position and need not open for vessel traffic.

Dated: December 7, 2001.

**Roy J. Casto,**  
*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 01–31841 Filed 12–26–01; 8:45 am]

**BILLING CODE 4910–15–P**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[CGD05–01–080]

**RIN 2115–AE84**

**Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Commander, Fifth Coast Guard District is temporarily expanding the geographic definition of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia and adding new port security measures, in order to improve the safety and security of vessel traffic at the entrance to Chesapeake Bay and Hampton Roads, Virginia. The effect of this temporary rule will be to ensure the safety and security of the boating public, local military commands, and commercial shipping interests in the area.

**DATES:** This temporary final rule is effective from December 11, 2001 to June 15, 2002.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia, 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Monica Acosta, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3453.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation and the rule takes effect immediately. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Immediate action is necessary to ensure the safety and security of the public, naval vessels moored at Naval Station Norfolk, and the commercial shipping industry in Hampton Roads, VA. There have been recent reports, all a matter of public record, that indicate a continuing high risk of terrorist activity in the United States. Based on these reports, the Fifth Coast Guard District Commander has determined a heightened security condition in the Port of Hampton Roads is required. Delay in implementing these changes, therefore, would be contrary to the public interest.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

This temporary rule is necessary for the District Commander to reduce the potential threat to the Port of Hampton Roads, VA and surrounding waterways. The Coast Guard, as lead federal agency for maritime homeland security, must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while at the same time maintaining our freedoms and sustaining the flow of commerce. The Coast Guard implements Limited Access Areas, listed in 33 CFR part 165, in order to control vessel movements within Captain of the Port Zones. A Regulated Navigation Area is a type of Limited Access Area that may be used to control vessel traffic by specifying

times of vessel entry, movement, or departure to, from, within, or through ports, harbors or other waters. The temporary rule the District Commander has established by this rulemaking allows for differentiation between lawful and unlawful maritime activities without unreasonably disrupting the free flow of commerce.

The District Commander has created a series of validation procedures to identify legitimate users of the Port of Hampton Roads. Validation procedures for vessels in excess of 300 GT, including tug and barge combinations in excess of 300 gross tons combined, include the following:

1. Vessels must check in with the Captain of the Port or his representative at least 30 minutes prior to entry to obtain permission to transit the Regulated Navigation Area.

2. Upon authorization and approval by the Captain of the Port or his representative, the vessel may enter the Regulated Navigation Area.

3. All vessels that receive permission to enter the Regulated Navigation Area remain subject to a Coast Guard port security boarding.

4. Thirty (30) minutes prior to getting underway, vessels departing or moving within the Regulated Navigation Area must contact the Captain of the Port or his representative via VHF–FM channel 13 or 16, call (757) 444–5209/5210, or call (757) 441–3298 for the Captain of the Port Command Duty Officer. The Captain of the Port will notify the public of changes in the status of the port security requirements by marine information broadcast on VHF–FM marine band radio, channel 22A (157.1 MHz)

**Regulatory Evaluation**

This temporary final 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. It has not been reviewed by the Office of Management and Budget 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). This temporary final rule will affect only those vessels in excess of 300 GT that enter and depart the Port of Hampton Roads and it is implemented for a limited duration. Therefore, we expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary rule will have a significant economic impact on a substantial number of small entities.

“Small entities” include 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 temporary rule will not have a significant economic impact on a substantial number of small entities. This temporary rule will affect only the following entities, some of which may be small entities: owners and operators of commercial vessels larger than 300 gross tons intending to transit or anchor in the Regulated Navigation Area. Because the number of small entities owning/operating commercial vessels of this size is not substantial, the rule is for a limited duration, and there is little anticipation of delay when requesting entry into the Area, the economic impact of this temporary rule should be minimal.

If, however, you believe that your business or organization qualifies as a small entity and that this temporary rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you believe it qualifies and in what way and to what degree this temporary rule will economically affect it.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the 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 (1–888–734–3247).

## Collection of Information

This temporary rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## 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 temporary rule under that Order and have determined that it does not have implications for federalism.

## Unfunded Mandates

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

## Taking of Private Property

This temporary rule will 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 temporary 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 temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

## Indian Tribal Governments

This temporary 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.

## Energy Effects

We have analyzed this temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. This temporary rule seeks to modify a well-established Regulated Navigation Area, and will be in effect for 6 months. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From December 11, 2001 until June 15, 2002, in § 165.501, suspend paragraph (a)(1), and add paragraphs (a)(13), (d)(15), and (d)(16) to read as follows:

### § 165.501 Chesapeake Bay entrance and Hampton Roads, VA. and adjacent waters—regulated navigation area.

(a) \* \* \*

(13) A line drawn due east from the mean low water mark at the North Carolina / Virginia border at latitude 36°33′03″ N, longitude 75°52′00″ W, to the Territorial Seas boundary line at latitude 36°33′05″ N, longitude 75°36′51″ W, thence generally

northeastward along the Territorial Seas boundary line to latitude 38°01'39" N, longitude 74°57'18" W, thence due west to the mean low water mark at the Maryland / Virginia border at latitude 38°01'39" N, longitude 75°14'30" W.

\* \* \* \* \*

(d) \* \* \*

(15) *Port Security Requirements.* No vessel in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons (combined), shall enter the Regulated Navigation Area, move within the Area, or be present within the Area unless it complies with the following requirements.

(i) Obtain authorization to enter the Regulated Navigation Area from the Captain of the Port or his representative at least thirty minutes prior to entering the Regulated Navigation Area. All vessels entering or remaining in the Area may be subject to a Coast Guard boarding.

(ii) Follow all instructions issued by the Captain of the Port or his representative.

(iii) Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without presenting valid photo identification.

(iv) Report any departure from or movement within the Regulated Navigation Area to the Captain of the Port or his representative at least 30 minutes prior to getting underway.

(v) Contact the Captain of the Port or his representative on VHF-FM channel 13 or 16, or by calling (757) 444-5209 or (757) 444-5210.

(vi) In addition to the authorities listed in this Part, this section is promulgated under the authority under 33 U.S.C. 1226.

(16) For purposes of the port security requirements in paragraph (d)(15) of this section, the Captain of the Port or his representative means any official designated by the Captain of the Port including, but not limited to, any Coast Guard patrol vessel. All patrol vessels shall display the Coast Guard Ensign at all times when underway.

\* \* \* \* \*

Dated: December 11, 2001.

**T.W. Allen,**

*Vice Admiral, U.S. Coast Guard Commander,  
Fifth Coast Guard District.*

[FR Doc. 01-31523 Filed 12-26-01; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 18

**RIN 1024-AC78**

#### Leasing Regulations

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule amends current National Park Service (NPS) regulations (36 CFR part 18) concerning the leasing of historic properties within areas of the national park system to encompass additional types of properties as authorized by law and to change in certain respects the procedural requirements for leasing of properties. This rule was published for public comment in the **Federal Register** on December 12, 2000 (65 FR 77538).

**EFFECTIVE DATE:** January 28, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Cindy Orlando, National Park Service, 1849 C Street, NW., Room 7311, Washington DC 20240 (202/565-1212).

#### SUPPLEMENTARY INFORMATION:

Section 802 of the National Parks Omnibus Management Act, Pub. L. 105-391 (Section 802), authorizes NPS to grant leases for the use of buildings and associated property located within areas of the national park system to persons and governmental entities under certain conditions. This new leasing authority supplements existing NPS leasing authority concerning historic properties set forth in 16 U.S.C. 470h-3 and implemented in 36 CFR part 18. This amendment of 36 CFR part 18 combines in one regulation the leasing authority provided by Section 802 with the leasing authority provided by 16 U.S.C. 470h-3. In general, this rule permits NPS to lease buildings, lands associated with such buildings, and historic land located within the boundaries of park areas. It does not permit the leasing of non-historic land.

This amendment of 36 CFR part 18 achieves simplification of the NPS historic leasing process as also called for by Section 802 and expands the scope of NPS leasing authority to all eligible properties. NPS also has authority to lease certain property located within units of the national park system under 16 U.S.C. 460l-22(a). This authority is implemented by NPS in 36 CFR part 17 which remains unchanged by the amended 36 CFR part 18. Eight public comments were received in response to the proposed rule. Several changes were made in response to them. In addition, the final rule contains a number of editorial changes and clarifications.

## Section Content

The following discussion describes the general content of each section of the final regulation. Public comments on these sections are also addressed as appropriate.

### Section 18.1

**Authority and Purposes.** Section 18.1 describes the authority for the rule. The basic authority is 16 U.S.C. 1 *et seq.*, (the National Park Service Organic Act), particularly 16 U.S.C. 1a-2(k) (the general NPS leasing authority contained in section 802 of Pub. L. 105-391), and 16 U.S.C. 470h-3 (government-wide leasing authority applicable to historic properties). NPS has included a "grandfather" provision in this section of the final regulation to permit the execution of proposed leases that were solicited under 36 CFR part 18 prior to the effective date of this part. In response to comments, NPS has clarified the particular categories of NPS property to which this part applies. In addition, NPS notes that although this part is couched in terms of leasing particular properties, nothing in this part precludes NPS from leasing a number of properties in a combined solicitation or from engaging management companies (where otherwise authorized) to assist in implementing an appropriate overall park area leasing program in accordance with the terms of this part.

### Section 18.2

Section 18.2 defines the terms used in the proposed rule. NPS has clarified the definition of "associated property" in the final regulation to make clear that associated property may relate to one or more buildings. NPS has also clarified the definition of "fair market value" by making clear that the particular terms and conditions of the lease being offered are to be taken into account in determining the fair market value of the lease. Finally, NPS has clarified the definitions of property types as used in the regulation and added a definition of non-historic property as a clarification. A comment asked whether a limited liability company qualifies as a "person" for purposes of this part. It does. A comment suggested that the definition historic property be expanded to include properties determined historic by state or local governments. NPS notes that the definition used is statutory and, in any event, includes properties of state or local significance listed in the National Register of Historic Places.