

This does not preclude the possibility, however, that unforeseen, intermittent FMLA leave may be a significant problem for some employers. The unexpected absence of certain employees may create problems in the workplace. For example, an unannounced absence can cause other workers or equipment to be idled. An unannounced absence can result in lost business or performance penalties to be imposed upon the employer. It is noteworthy that the two industries with the highest FMLA costs in the 2004 Employment Policy Foundation ("EPF") survey were transportation (an industry which has performance penalties) and telecommunications (an industry where quality of service agreements are common).<sup>30</sup> Anecdotal reports also indicate that some employers schedule extra workers for some positions to avoid the negative impacts of unforeseen, intermittent leave.

- The Department also requests comment on the impact that unscheduled, intermittent leave has on productivity and profits.

There is some indication that the use of unscheduled, intermittent FMLA leave is not evenly distributed across employers or even across the facilities of a given employer. Rather, it may be concentrated in some facilities and only becomes a problem for employers when the portion of workers taking unscheduled, intermittent FMLA leave in a given facility or operation exceeds some critical point.

Some believe that the apparent concentration of workers taking unscheduled, intermittent FMLA leave may be due to poor management or other labor-relations problems. Others believe that as more and more workers in a particular facility take unscheduled leave, the likelihood that the remaining workers will become sick or injured and begin to take FMLA leave also increases. See, e.g., *Workers' Compensation and Family and Medical Leave Act Claim Contagion*.<sup>31</sup>

- The Department requests that commenters submit information on the concentration of workers taking unscheduled, intermittent FMLA leave in specific industries and employers.

- The Department requests that commenters submit information on the factors contributing to large portions of the work force in some facilities taking unscheduled, intermittent FMLA leave.

Finally, the problems associated with employees taking unscheduled, intermittent FMLA leave may be related to the salaried or hourly-pay status of the employees. Anecdotal reports indicate that employers do not appear to have problems when workers who are salaried and exempt from the Fair Labor Standards Act ("FLSA") under 29 CFR part 541 take small blocks of unscheduled, intermittent FMLA leave so long as these workers complete their work. In fact, some employers may not even record absences of a couple hours or less because of the scheduling flexibility typically afforded to salaried workers, and because the absences often have no impact on such workers' pay or productivity. Employers report they have both administrative and production problems when non-exempt (typically hourly-paid) workers take unscheduled, intermittent FMLA leave, especially when these workers do not notify their employers that they are not coming to work at their scheduled reporting time. Unlike salaried employees, many non-exempt employees may not be paid when they take unscheduled, intermittent FMLA leave.

- The Department requests that commenters submit information related to the different treatment of FLSA exempt and nonexempt employees taking unscheduled, intermittent FMLA leave.

- The Department also requests information on the different impact the leave taking by FLSA exempt and nonexempt employees may have on the workers who are taking leave and their employers.

#### *I. Additional Questions Related to the Coverage Estimates and Their Impacts*

- The Department requests public comment on the estimates and the methodology used to produce these estimates, including any available information that can be used to improve the estimates of the impact that FMLA leave has on employers and employees.

#### **IV. Conclusion**

The Department invites interested parties having knowledge of the FMLA to submit comments and welcomes any pertinent information that will provide a basis for ascertaining the effectiveness of the current implementing regulations and the Department's administration of the Act. The issues posed in this notice are not meant to be an exclusive list of

issues for which the Department seeks commentary.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

**Paul DeCamp,**

*Administrator, Wage and Hour Division.*

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[CGD05-06-104]

RIN 1625-AA87

#### **Security Zone; Chesapeake Bay, Between Sandy Point and Kent Island, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a permanent security zone on the waters of the Chesapeake Bay, within 250 yards north of the north span and 250 yards south of the south span of the William P. Lane Jr. Memorial Bridge, located between Sandy Point and Kent Island, Maryland. This action is necessary to provide for the security of a large number of participants during the annual Bay Bridge Walk across the William P. Lane Jr. Memorial Bridge, held annually on the first Sunday in May. The security zone will allow for control of vessels or persons within a specified area of the Chesapeake Bay and safeguard the public at large.

**DATES:** Comments and related material must reach the Coast Guard on or before March 1, 2007.

**ADDRESSES:** You may mail comments and related material to Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226-1791. Coast Guard Sector Baltimore, Waterways Management Division, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Baltimore, Waterways Management Division, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

<sup>30</sup> Mulvey, Janemarie, "The Cost and Characteristics of Family and Medical Leave," Employment Policy Foundation Issue Backgrounder (Apr. 19, 2005). But see Institute for Women's Policy Research, "Assessing the Family and Medical Leave Act: An Analysis of an Employment Policy Foundation Paper on Costs (June 29, 2005).

<sup>31</sup> Gardner, Harold H., Kleinman, Nathan L., and Butler, Richard J., *Workers' Compensation and Family and Medical Leave Act Claim Contagion*, Journal of Risk and Uncertainty, Volume 20, Jan. 2000, at 89-112.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576-2674 or (410) 576-2693.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-06-104), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Baltimore, Waterways Management Division, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Captain of the Port Baltimore 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 still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

In this particular rulemaking, to address the aforementioned security

concerns during the highly-publicized public event, and to take steps to prevent the catastrophic impact that a terrorist attack against a large number of participants during the annual Bay Bridge Walk would have on the public interest, the Captain of the Port, Baltimore, Maryland proposes to establish a security zone upon all waters of the Chesapeake Bay, within 250 yards north of the north (westbound) span of the William P. Lane Jr. Memorial Bridge, and 250 yards south of the south (eastbound) span of the William P. Lane Jr. Memorial Bridge, from the western shore at Sandy Point to the eastern shore at Kent Island, Maryland. This security zone will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against a large number of participants during the event. Due to these heightened security concerns and the catastrophic impact a terrorist attack on the Chesapeake Bay Bridge during the annual Bay Bridge Walk would have on the large number of participants, and the surrounding area and communities, a security zone is prudent for this type of event.

**Discussion of Proposed Rule**

Each spring on the first Sunday in May, the Maryland Transportation Authority closes the eastbound span of the William P. Lane Jr. Memorial Bridge (also known as the Chesapeake Bay Bridge) to vehicular traffic to allow pedestrians to participate in the 4.3-mile Bay Bridge Walk across the bridge. The event takes place from Sandy Point State Park in Anne Arundel County, Maryland at 9 a.m. local time and consists of an estimated 50,000 participants walking across the Chesapeake Bay Bridge to Kent Island, in Queen Anne's County, Maryland. The Bay Bridge Walk will be canceled in the event of rain, high winds or extreme weather. Vessels underway at the time this security zone is enforced will immediately proceed out of the zone. We will issue Broadcast Notices to Mariners to further publicize the security zone. This security zone is necessary to prevent vessels or persons from entering or remaining in the waters of the Chesapeake Bay 250 yards from each span of the William P. Lane Jr. Memorial Bridge.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not

reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

The operational restrictions of the security zone are tailored to provide the minimal disruption of vessel operations necessary to provide immediate, improved security for persons, vessels, and the waters of the Chesapeake Bay, within 250 yards of the William P. Lane Jr. Memorial Bridge, located between Sandy Point and Kent Island, Maryland. Additionally, this security zone is temporary in nature and any hardships experienced by persons or vessels are outweighed by the national interest in protecting the public at large from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities: The owners or operators of vessels intending to operate, remain or anchor within 250 yards of the William P. Lane Jr. Memorial Bridge, located between Sandy Point and Kent Island, Maryland. This security zone will not have a significant economic impact on a substantial number of small entities because vessels transiting through the security zone without loitering may be permitted to do so, and those with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone. Before the effective period, we would issue maritime advisories widely available to users of the Chesapeake Bay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it,

please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would 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 want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald L. Houck, at Coast Guard Sector Baltimore, Waterways Management Branch, at telephone number (410) 576–2674. 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.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rulemaking is a security zone. A draft “Environmental Analysis Check List” and a draft “Categorical Exclusion Determination” (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### 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 proposes to amend 33 CFR part 165 as follows:

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

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.507 to read as follows:

#### **§ 165.507 Security Zone; Chesapeake Bay, between Sandy Point and Kent Island, MD.**

(a) *Definitions.* (1) The Captain of the Port, Baltimore, Maryland means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) *Location.* The following area is a security zone: All waters of the

Chesapeake Bay, from the surface to the bottom, within 250 yards north of the north (westbound) span of the William P. Lane Jr. Memorial Bridge, and 250 yards south of the south (eastbound) span of the William P. Lane Jr. Memorial Bridge, from the western shore at Sandy Point to the eastern shore at Kent Island, Maryland.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in § 165.33 of this part.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576-2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

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

(e) *Enforcement period.* This section will be enforced annually on the first Sunday in May from 7 a.m. to 5 p.m. local time.

Dated: November 6, 2006.

**Jonathan C. Burton,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-06-105]

RIN 1625-AA87

#### Security Zone; Georgetown Channel, Potomac River, Washington, DC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone on the waters of the upper Potomac River. This action is necessary to provide for the security of a large number of visitors to the annual July 4th celebration on the National Mall in Washington, DC. The security zone will allow for control of a designated area of the river and safeguard spectators and high-ranking officials.

**DATES:** Comments and related material must reach the Coast Guard on or before March 1, 2007.

**ADDRESSES:** You may mail comments and related material to Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226-1791. Coast Guard Sector Baltimore, Waterways Management Division, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Baltimore, Waterways Management Division, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576-2674 or (410) 576-2693.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-06-105), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Baltimore, Waterways Management Division, at the address

under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

##### Background and Purpose

Due to increased awareness that future terrorist attacks are possible, including continued threats against U.S. interests by Al-Queda and other terrorist organizations, the Coast Guard as lead federal agency for maritime homeland security has determined that the Captain of the Port Baltimore 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 still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a large number of spectators and high-ranking officials during the annual July 4th celebration would have on the public interest, the Coast Guard is proposing to establish a security zone upon all waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, 75 yards from the eastern shore measured perpendicularly to the shore, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge Complex) to the Theodore Roosevelt Memorial Bridge and all waters in between, totally including the waters of the Georgetown Channel Tidal Basin. This security zone will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against a large number of spectators and high-ranking officials during the annual July 4th celebration. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on the National Mall in Washington, DC during the annual July 4th celebration would have on the large number of spectators and high-ranking officials, as well as the surrounding area and communities, a security zone is prudent for this type of event.

##### Discussion of Proposed Rule

It is very likely that hundreds of thousands of visitors will attend the July 4th celebration on the National Mall in Washington, DC. The Captain of the Port, Baltimore, Maryland proposes to