

## 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. A new temporary § 165.108–055 is added to read as follows:

### **§ 165.108–055 Safety Zone; Ohio River Miles 252.0 to 253.0, Middleport, Ohio.**

(a) *Location.* The following area is a safety zone: the waters of the Ohio River from miles 252.0 to 253.0 extending the entire width of the river.

(b) *Effective date.* This section is effective from 9:30 p.m. to 10:30 p.m. on July 4, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or his designated representative. They may be contacted via VHF–FM Channel 13 or 16 or via telephone at (304) 529–5524.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 7, 2002.

**L.D. Stroh,**

*Commander, U.S. Coast Guard, Captain of the Port Huntington.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

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

**[CGD05–01–066]**

**RIN 2115–AE84**

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

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; change of effective period.

**SUMMARY:** Commander, Fifth Coast Guard District is extending the effective

period for the temporary final rules published earlier for the “Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters” to December 15, 2002, to ensure public safety and security and to ensure the uninterrupted flow of commerce.

**DATES:** Section 165.501(d)(14) added at 66 FR 53713, October 24, 2001, effective October 24, 2001, until June 15, 2002; sections 165.501(a)(13), (d)(15), and (d)(16), added at 66 FR 66754, December 27, 2001, effective December 11, 2001, until June 15, 2002, are extended in effect until December 15, 2002. Section 165.501(a)(1), suspended at 66 FR 66754, December 27, 2001, from December 11, 2001, until June 15, 2002, will continue to be suspended through December 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule or questions on viewing or submitting material to the docket, contact Lieutenant Junior Grade Monica Acosta, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3453.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background and Purpose**

Due to the terrorist attacks of September 2001, and continued warnings from national security and intelligence officials that future terrorist attacks are possible, there is an increased risk that subversive activity could be launched by vessels or persons against the United States. In September 2001, the Commander, Naval Station Norfolk requested vessel speed limits for certain vessels operating in the vicinity of Naval Station Norfolk to ensure the safety and security of naval vessels in that area.

On October 24, 2001, the Coast Guard published a temporary final rule entitled, “Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters,” in the **Federal Register** (66 FR 53712). The temporary rule added vessel speed limits for certain vessels operating in the vicinity of Naval Station Norfolk, to the existing regulated navigation area for the Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters.

We are extending the effective period of the temporary final rule so that we can complete a rulemaking to permanently change the regulated navigation area at the entrance to Chesapeake Bay and Hampton Roads, VA. Extending the effective date of the temporary rule until December 15, 2002,

should provide us enough time to complete the rulemaking.

Due to the increased awareness that future terrorist attacks are possible, the Coast Guard, as lead federal agency for maritime homeland security, has determined that the District Commander 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. A regulated navigation area is a tool available to the Coast Guard 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.

On December 27, 2001, we published a temporary final rule entitled, “Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters,” in the **Federal Register** (66 FR 66753). The temporary rule expanded 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 added new port security measures.

We are also extending the effective period of this temporary final rule so that we can complete a rulemaking to permanently change the regulated navigation area at the entrance to Chesapeake Bay and Hampton Roads, VA. Extending the effective date of the temporary rule until December 15, 2002, should provide us enough time to complete the rulemaking.

We did not publish a notice of proposed rulemaking (NPRM) for this rule and it is being made effective less than 30 days after publication in the **Federal Register**. When we promulgated these rules on October 24, 2001, and December 27, 2001, we intended to either allow them to expire on June 15, 2002, or to cancel them if we made permanent changes before this date. We are now preparing an NPRM to make permanent changes to the regulated navigation area. That rulemaking will follow the normal notice and comment procedures, and a final rule should be published before December 15, 2002. Continuing the temporary rule in effect while the permanent rulemaking is in progress will help to ensure the security of the Chesapeake Bay and the Port of Hampton Roads during that period. Therefore, the Coast Guard finds good cause under 5 U.S.C. 553(b)(B) and (d)(3) for why a notice of proposed rulemaking and opportunity for comment is not required and why this

rule will be made effective fewer than 30 days after publication in the **Federal Register**.

#### Regulatory Evaluation

This temporary 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. The speed limit restrictions are only in effect for less than 4 miles, and typical vessel speed in 10 knots, so the actual delay for each vessel will be less than 6 minutes in each direction. Therefore, the delay caused by the two-knot reduction in speed will be minimal. Furthermore, we have received no comments to date from affected parties. In sum, 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. This rule was not preceded by a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. section 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities. If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary rule will have a significant economic impact on it, please submit a comment (see **FOR FURTHER INFORMATION CONTACT**) 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

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. 3501–3520).

#### 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 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 affect 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### 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 continue to modify a well-established regulated navigation area, and will be in effect for another 6 months. A “Categorical Exclusion Determination” is available in the

docket for inspection or copying where indicated under **FOR FURTHER INFORMATION CONTACT**.

#### 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.

#### § 165.501 [Amended]

2. In § 165.501, paragraph (a)(1), which was suspended at 66 FR 66754, December 27, 2001, from December 11, 2001, until June 15, 2002, will continue to be suspended through December 15, 2002; paragraph (d)(14), which was added at 66 FR 53713, October 24, 2001, effective October 24, 2001, until June 15, 2002; and paragraphs (a)(13), (d)(15), and (d)(15), added at 66 FR 66754, December 27, 2001, from December 11, 2001, until June 15, 2002, are all extended in effect until December 15, 2002.

Dated: June 12, 2002.

**T.C. Farr,**

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

[FR Doc. 02-15335 Filed 6-13-02; 5:08 pm]

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### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

**[CGD07-02-060]**

**RIN 2115-AA97**

#### Security Zones; Ports of Jacksonville and Canaveral, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is extending the effective period of the temporary final rule that established temporary 100 yard moving and fixed security zones around certain vessels within the Ports of Jacksonville and Canaveral. The security zones will prohibit vessels from coming within 100 yards of all tank vessels, cruise ships, and military pre-

positioned ships when these vessels enter, depart or moor within the Ports of Jacksonville and Canaveral. These security zones are needed to ensure public safety and prevent sabotage or terrorist acts against vessels in the COTP Jacksonville area of responsibility. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Jacksonville, Florida or his designated representative.

**DATES:** This rule is effective from midnight (12 a.m.) June 16, 2002 through 12 (noon) November 15, 2002.

**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 [CGD02-02-060] and are available for inspection or copying at Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Drew Casey, Coast Guard Marine Safety Office Jacksonville, at 904-232-3610, ext. 105.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since the Captain of the Port of Jacksonville has determined that immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, 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**.

##### Background and Purpose

On September 12, 2001, one day after the September 11 terrorist attacks, the Coast Guard established a temporary rule establishing security zones around tank vessels, passenger vessels, and military pre-positioned ships until October 3, 2001 (published on September 26, 2001, 66 FR 49104). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorist attacks are likely. As a result, on October 17, 2001, the Coast Guard published a second temporary rule in the **Federal Register** continuing these zones through 11:59

p.m. June 15, 2002 (66 FR 52689). This third temporary rule will continue the zones through noon on November 15, 2002 so the Coast Guard can publish a notice of proposed rulemaking to receive public comment on making this temporary rule final.

This temporary rule creates 100-yard security zones around all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the Ports of Jacksonville and Canaveral. No person or vessel may enter these zones without the permission of the Captain of the Port of Jacksonville. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30° 23' 35" N, 81° 19' 08" West, when entering the Port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28° 22.7 N, 80° 31.8 W, and 28° 23.7 N, 80° 29.2 W, when entering Port Canaveral. Temporary fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville and Canaveral, Florida.

#### Regulatory Evaluation

This 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 Transportation (DOT) (44 FR 11040; February 26, 1979) because the impact of this rule on commercial and recreational vessel navigation is minimal because most vessels will be able to transit around these zone and the Captain of the Port may permit entry into the zone on a case by case basis.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this rule would have a significant economic effect upon 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 rule will not have a significant economic impact on a substantial number of small entities