

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG-2008-1119]

RIN 1625-AA11

Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent regulated navigation area (RNA) in waters of the Chesapeake and Delaware (C & D) Canal, within the anchorage basin at Chesapeake City, Maryland, to be enforced annually, on the last Saturday in June, from 12:01 a.m. until 11:59 p.m. This RNA is necessary to provide for the safety of life, property and the environment. This RNA will restrict and control the movement of vessels and persons throughout the anchorage basin during the Town of Chesapeake City's Canal Day event.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before May 11, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2008-1119 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Ronald L. Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone

number (410) 576-2674 or (410) 576-2693. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-1119), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2008-1119" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-1119 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation

West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226-1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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

Each year, on the last Saturday in June, thousands of people attend the Town of Chesapeake City's Canal Day outdoor waterfront festival, located adjacent to the C & D Canal anchorage basin at Chesapeake City, Maryland. Due to the growing presence of visiting boaters in recent years, the waterways surrounding this annual event have become increasingly congested. In 2007, an estimated 400 boats and 10,000 visitors came to Chesapeake City, a town with a population of 800. An estimated 325 recreational boats were anchored or moored alongside other boats (rafts). These boats accounted for approximately 600 visitors. Persons on recreational vessels or other watercraft began arriving on the Wednesday before the festival, and by that evening, large lines of rafts filled the anchorage basin, the size of which is approximately 420 yards in length and 170 yards in width. On a typical weekend, 10 to 15 boats anchor in the basin. However, during Canal Day waterfront events, the number of boats anchoring in and around the basin far exceeds this number. In June 2008, a Temporary Final Rule (33 CFR 165.T05-

0315; 73 FR 35588) was implemented and proved to be a beneficial tool to ensure safety and to control vessel movement during this event. Accidental drownings, personal injuries, boat fires, boat capsizings and sinkings, and boating collisions are safety concerns during such crowded events. Access on the water for hazard prevention and response is critical. The Coast Guard has the authority to impose appropriate controls on activities that may pose a threat to persons, vessels and facilities under its jurisdiction. The Coast Guard proposes to establish a RNA that will be enforced on the last Saturday in June, annually, in the C & D Canal, within the anchorage basin at Chesapeake City, Maryland. The purpose of this rule is to promote maritime safety, and to protect the environment and the maritime public transiting the area from the potential hazards associated with a large gathering of recreational vessels and other watercraft in a confined area. The proposed rule is needed to protect the public and control vessel movement during this event.

Discussion of Proposed Rule

The Town of Chesapeake City, Maryland, sponsors an outdoor festival adjacent to the C & D Canal anchorage basin, at Chesapeake City, Maryland, annually, on the last Saturday in June each year. This rule will restrict and control access to this area and vessel traffic as needed as a method of providing for the safety of persons and vessels within the anchorage basin and the C & D Canal.

This rule will establish a RNA in the C & D Canal anchorage basin, bounded by a line drawn across the entrance to the basin from position latitude 39°31'39.6" N, longitude 075°48'36.5" W, to position latitude 39°31'40.6" N, longitude 075°48'43.3" W, and will limit access to this area by vessels and persons. Persons or vessels requiring entry into or passage within the RNA area must request authorization from the District Commander or his or her designated representative, by telephone at (410) 576-2693 or by marine band radio on VHF-FM Channel 16 (156.8 MHz), during the enforcement periods. All Coast Guard vessels enforcing this RNA area can be contacted on marine band radio VHF-FM Channel 16 (156.8 MHz). Vessels granted permission to transit the area must travel at no-wake speed.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses

based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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. Though the RNA will be in effect for an entire day, commercial traffic in the C & D Canal anchorage basin is limited, and vessels transiting the C & D Canal may proceed safely around the RNA.

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. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the C & D Canal anchorage basin at Chesapeake City, Maryland, from 12:01 a.m. until 11:59 p.m. on the last Saturday in June, annually. This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: although this rule will be in effect for the entire day and applies to the entire anchorage basin, commercial vessel traffic in this area is limited and traffic would be allowed to pass within the RNA with the permission of the District Commander or his or her designated representative, vessels transiting the C & D Canal may proceed safely around the RNA, and the Coast Guard will issue maritime advisories widely available to users of the waterway before the effective period.

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 (Pub. L. 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 Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576-2674. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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 Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, 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 under the Instruction that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded under section 2.B.2 Figure 2–1, paragraph 34(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves establishing a RNA in an anchorage area. A preliminary "Environmental Analysis Check List" supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" sections of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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 § 165.556 to read as follows:

§ 165.556 Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD.

(a) Location. The following area is a regulated navigation area: All waters of the Chesapeake and Delaware (C & D) Canal within the anchorage basin at Chesapeake City, Maryland, bounded by a line drawn across the entrance to the basin from position latitude 39°31'39.6" N, longitude 075°48'36.5" W, to position latitude 39°31'40.6" N, longitude

075°48'43.3" W. All coordinates refer to NAD 1983.

(b) Definitions. For the purposes of this section:

District Commander means the Commander, Fifth Coast Guard District or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, Fifth Coast Guard District to act on his or her behalf, or his or her designated representative.

(c) Regulations. The general regulations governing regulated navigation areas, found in 33 CFR 165.13, apply to the regulated navigation area described in paragraph (a) of this section.

(1) All vessels and persons are prohibited from entering and accessing this regulated navigation area, except as authorized by the District Commander or his or her designated representative.

(2) Persons or vessels requiring entry into or passage within the regulated navigation area must request authorization from the District Commander or his or her designated representative, by telephone at (410) 576–2693 or by marine band radio on VHF–FM Channel 16 (156.8 MHz), from 12:01 a.m. until 11:59 p.m. on the last Saturday in June, annually. All Coast Guard vessels enforcing this regulated navigation area can be contacted on marine band radio VHF–FM Channel 16 (156.8 MHz).

(3) All vessels and persons must comply with instructions of the District Commander or the designated representative.

(4) The operator of any vessel entering or located within this regulated navigation area shall:

- (i) travel at no-wake speed,
- (ii) stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and
- (iii) proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

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

(e) Enforcement period. This section will be enforced from 12:01 a.m. until 11:59 p.m. on the last Saturday in June, annually.

Dated: February 25, 2009.

Fred M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

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