

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.

SUMMARY: The Commander, Fifth Coast Guard District is adding 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. This temporary rule is necessary to ensure the safety and security of naval vessels that are moored at Naval Station Norfolk. The temporary rule will require all vessels of 300 gross tons (GT) and greater to reduce speed to eight knots (as over ground) in the vicinity of Naval Station Norfolk, in order to improve security measures and reduce the potential threat to Naval Station Norfolk security that may be posed by these vessels.

DATES: This temporary final rule is effective from October 24, 2001 to June 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 docket CGD05-01-066 and 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, USCG, 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 rulemaking, and the rule takes effect immediately. The changes made by this temporary rule are specifically authorized under 33 U.S.C. 1223(a)(4) and 1226 as a response to the terrorist acts that occurred on September 11, 2001, and to prevent similar occurrences. In response to an October 9, 2001 request by the Navy, immediate

action is necessary to ensure the safety and security of naval vessels moored at Naval Station Norfolk during large merchant vessel transits of the Elizabeth River. Due to their large size and substantial momentum while underway, and considering the close proximity of the shipping channel to Naval Station Norfolk, merchant vessels greater than 300 GT pose a potential threat to Naval Station Norfolk's security. Imposing this speed limit will help provide better security alongside Naval Station Norfolk as well as reduce the potential threat. Therefore, delay in implementing these changes is contrary to the public interest, and the Coast Guard finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and comment rulemaking and advance publication are not required.

Background and Purpose

The Commander Naval Station Norfolk requested this rule to reduce the potential threat to national security that may be posed by vessels of 300 gross tons or greater as they pass the naval station. This temporary modification of the RNA is necessary to ensure the safety and security of naval vessels in the vicinity of Naval Station Norfolk. The U.S. Navy or other federal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

No vessel of 300 gross tons or greater may proceed at a speed over eight knots between Elizabeth River Channel Lighted Gong Buoy 5 (LL 9470) of Norfolk Harbor Reach and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach. All vessels less than 300 gross tons are exempt from this rule, as well as all Public vessels as defined in 33 U.S.C. 1321, which states that a public vessel means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Regulatory Evaluation

This temporary 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). This temporary final rule will be in effect for less than nine months. During this period, it is estimated to affect 3988

vessel transits. However, the speed limit restrictions are only in effect for less than four miles, and typical vessel speed is 10 knots, so the actual delay for each vessel will be less than 6 minutes in each direction. Therefore, this delay caused by the two-knot reduction in speed will be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this 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 temporary rule will not have a significant economic impact on a substantial number of small entities. This rule will only affect the following entities, some of which may be small entities: The owners or operators of vessels 300 gross tons or greater intending to transit Norfolk Harbor Reach at speeds greater than eight knots. This rule will only affect a limited portion of a vessel's total transit, and for only a length of less than four miles. Deep-draft vessels typically transit this area at approximately 10 knots, and therefore the eight-knot speed limit will not cause significant delays. The actual delay for each vessel is less than 6 min. in each direction and the impact on small entities should be minimal. Additionally, we believe that very few small entities operate vessels of greater than 300 gross tons on a regular basis. Further, the rule is only in effect for nine months.

If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this 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 could 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 rule calls 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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 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 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

We have considered the environmental impact of this temporary rule and concluded that under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.JC, this temporary 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 less than nine 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, Vessels, 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 October 24, 2001 until June 15, 2002, in § 165.501, add new paragraph (d)(14) to read as follows:

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

* * * * *

(d) * * *
(14) Speed restrictions on Norfolk Harbor Reach. Vessels of 300 gross tons or more may not proceed at a speed over eight knots between the Elizabeth River Channel Lighted Gong Buoy 5 (LL 9470) of Norfolk Harbor Reach (northwest of Sewells Point) at approximately 36°58'00" N, 76°20'00" W and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach (southwest of Norfolk International Terminal) at approximately 36°54'17" N, 76°20'11" W. All vessels less than 300 gross tons are exempt from this rule. All coordinates reference Datum NAD 1983. This speed restriction does not apply to Public vessels as defined in 33 U.S.C. 1321(a)(4). The U.S. Navy or other Federal agencies may assist the U.S. Coast Guard in the enforcement of this paragraph.

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Dated: October 10, 2001.

T.W. Allen,

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

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 01-008]

RIN 2115-AA97

Security Zones; Los Angeles Harbor, Los Angeles, CA and Avila Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary security zones—one in the waters surrounding the Coast Guard Base-ISC San Pedro at Reservation Point in the Los Angeles Harbor, the second one in the waters surrounding the Los Angeles Cruise Ship Terminal in the Los Angeles Harbor and the third zone is in the waters adjacent to the Diablo Canyon Nuclear Power Plant in Avila Beach, CA. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in these structures. These security zones will prohibit all persons and vessels from entering,