

D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as "other property" because C becomes a DSAG member. See paragraph (g)(2)(i) of this section. The result would be the same if D did not own any C stock prior to year 6 and D purchased all of the C stock in year 6. See paragraph (g)(2)(i) of this section. Similarly, if D did not own any C stock prior to year 6, D purchased 20 percent of the C stock in year 6, and then acquired all of the remaining C stock in year 7, the C stock purchased in year 6 and the C stock acquired in year 7 (even if purchased) would not be treated as "other property" because C becomes a DSAG member. See paragraph (g)(2)(i) of this section.

Example 3. Intra-SAG transaction. For more than five years, D has owned all of the stock of S. D and S, in the aggregate, have owned section 368(c) stock but not section 1504(a)(2) stock of C. Therefore, D and S are DSAG members, but C is not. In year 6, D purchases S's C stock. If D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as "other property". D's purchase of the C stock from S is disregarded for purposes of paragraph (g)(1) of this section because that C stock was owned by the DSAG immediately before and immediately after the purchase. See paragraph (g)(1) of this section.

Example 4. Affiliate exception. For more than five years, P has owned 90 percent of the sole outstanding class of the stock of D and a portion of the stock of C, and X has owned the remaining 10 percent of the D stock. Throughout this period, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases P's C stock. However, D does not own section 1504(a)(2) stock of C after the year 6 purchase. If D distributes all of its C stock to X in exchange for X's D stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as "other property" because the C stock was purchased from a member (P) of the affiliated group (as defined in § 1.355-3(b)(4)(iv)) of which D is a member, and P did not purchase that C stock within the pre-distribution period. See paragraph (g)(2)(ii) of this section.

(h) [Reserved]. For further guidance, see § 1.355-2(h).

(i) **Effective/applicability date—(1) In general.** Paragraphs (g)(1) through (g)(5) of this section apply to distributions occurring after December 15, 2008.

However, except as provided in paragraph (i)(2) of this section, paragraphs (g)(1) through (g)(5) of this section do not apply to any distribution occurring after December 15, 2008 that is pursuant to a transaction which is—

(i) Made pursuant to an agreement which was binding on December 15, 2008, and at all times thereafter;

(ii) Described in a ruling request submitted to the Internal Revenue Service on or before such date; or

(iii) Described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(2) **Transition election.** In the case of any distribution described in the second sentence of paragraph (i)(1) of this section, taxpayers may elect to apply all of paragraphs (g)(1) through (g)(5) of this section. However, neither the distributing corporation nor any person related to the distributing corporation within the meaning of section 267(b) (determined immediately before or immediately after the distribution) may make such an election with respect to a distribution unless all such persons make such an election with respect to such distribution.

(3) **Retroactive election.** In the case of any distribution occurring on or before December 15, 2008, taxpayers may elect to apply all of paragraphs (g)(1) through (g)(5) of this section to distributions to which section 4(b) of the Tax Technical Corrections Act of 2007, Public Law 110-172 (121 Stat. 2473, 2476) applies (generally applicable to distributions made after May 17, 2006, as provided in section 4(d) of that act). However, neither the distributing corporation nor any person related to the distributing corporation within the meaning of section 267(b) (determined immediately before or immediately after the distribution) may make such an election with respect to a distribution unless all such persons make such an election with respect to such distribution.

(4) **Manner of election.** Taxpayers may make any election available under this paragraph (i) by applying the selected rule on its original or amended return.

(5) **Prior law.** For distributions to which paragraphs (g)(1) through (g)(5) of this section do not apply, see § 1.355-2(g), as contained in 26 CFR part 1, revised as of April 1, 2008.

(6) **Expiration date.** The applicability of paragraph (i) of this section will expire on December 15, 2011.

Steve T. Miller,

(Acting) Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2008-0497]

RIN 1625-AA01

Special Anchorage Area "A", Boston Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby amends the Boston Inner Harbor Special Anchorage Area "A" at the entrance to Fort Point Channel in Boston Harbor, Boston, MA at the request of the Boston Harbormaster and the Boston Harbor Yacht Club. This action will provide additional anchorage space and provide a safe and secure anchorage for vessels of not more than 65 feet in length.

DATES: This rule is effective January 14, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0497 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-0497 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; and the Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223-8355 or e-mail

John.J.Mauro@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 20, 2008, we published a notice of proposed rulemaking (NPRM) entitled Special Anchorage "A", Boston Harbor, MA in the **Federal Register** (73 FR 49131). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

In 1982, three anchorages were established in response to a request by the Boston Harbormaster. These three anchorages were designated Boston Inner Harbor A, Boston Inner Harbor B, and Boston Inner Harbor C. When they were created, 39 of 43 comments were in favor of the anchorage establishments. Many of the initial commenters identified themselves as members of the Boston Harbor Sailing Club, a sailing club located in close proximity to the proposed anchorage area at that time. Of the disfavoring groups, the Department of the Army, Corps of Engineers expressed some concern about Anchorage Area "C" encroaching on the Fort Point Channel approach. Another commenter complained that Anchorage Area "A", extended southward, interfering with the approach to Rowes Wharf. The two remaining commenters represented commercial interests opposed to the Anchorage Areas, especially Anchorage Area "C".

A public hearing was held thereafter in which six commenters voiced their support for the Anchorage Area. One commenter, however, expressed concern about the proximity of Anchorage Area "C" to the main shipping channel for Boston Harbor. With an average speed of six (6) knots, a large vessel transiting the area could damage closely anchored sailboats. The same commenter also disapproved of the way Anchorage Area "C" encroached on the Fort Point Channel. Another commenter complained about Anchorage Area "A" and the difficult approach that would be required by a vessel attempting to moor on Rowes Wharf. The final commenter was concerned about the navigational safety of the Fort Point Channel approach, which was reduced by Anchorage Area "C", and also agreed with the concerns about the approach to Rowes Wharf.

At that time, in response to the comments received, the Anchorage Areas "A" and "C" were modified in response to reasonable complaints that were raised by commercial parties. Each of the areas were plotted on a large scale chart providing for greater accuracy. The southern boundary of Anchorage

Area "A" was moved northward to allow a more favorable approach to Rowes Wharf and the southern boundary of Anchorage Area "C" was relocated northward to open up the approach to Fort Point Channel. The eastern boundary of Anchorage Area "C" was moved away from the main shipping channel.

At the same time, administration of the anchorage area was given to the Harbormaster of the City of Boston pursuant to local ordinances. The City of Boston was also given charge of installing and maintaining suitable navigational aids to mark the limits of the anchorage area.

In 1985, in response to a request by the Boston Harbormaster, Boston Police Department and the developer of the Rowes Wharf reconstruction project, a modification to the anchorages was deemed to be required because redevelopment of the Rowes Wharf area in Boston would change recreational and commercial vessel traffic patterns in the Rowes Wharf waterfront area. The presence of the existing Anchorage Area B would impede the passage of vessels in and out of Rowes Wharf and would create a navigation safety hazard if vessels were anchored there. Therefore, this modification removed Anchorages A, B and C and established Boston Inner Harbor Anchorage Area "A".

Since this time, Boston Harbormasters have permitted the Boston Harbor Sailing Club to establish moorings in Anchorage Area A. The Boston Harbor Sailing Club rents the moorings to customers who then apply to the City of Boston for a permit allowing the mooring. Although the moorings are relatively small, the associated anchoring systems range from 1000 to 4000 pounds.

In addition, when the anchorage was established, the Coast Guard used the North American Datum 1927 (NAD27) as a plotting system. Since then, however, the Coast Guard adopted the North American Datum 1983 (NAD83) for its plotting system. This new system changed the coordinate positions of the anchorages on the charts. In this rulemaking, the Coast Guard intends to update the position of this anchorage using NAD83 coordinates.

When Rowes Wharf was finished, the new wharf had a set of docks attached to it. The current placement of these docks does not allow enough of a fairway for vessels to transit between the anchorage area and the pier facings. Changing the size of the anchorage area will allow this to occur by changing the positions of the buoys.

Discussion of Comments and Changes

No comments or changes were suggested to the proposed rule. None have been made.

Regulatory Analyses

We developed this 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 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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, as the creation of the anchorage will align more efficiently with current traffic patterns.

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 rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of recreational vessels transiting in the vicinity of the anchorage, the Boston Aquarium, Boston Harbor ferry vessels and water taxis transiting the local area as well as those vessels transiting into Anchorage Area "A".

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered 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). 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 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. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 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 concluded under the Instruction 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, this rule is categorically excluded, under figure 2-1, paragraph (34)(f), of the Instruction, from further environmental documentation. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.30 by revising paragraph(m) to read as follows:

§ 110.30 Boston Harbor, Mass., and adjacent waters.

* * * * *

(m) Boston Inner Harbor A. (1) The waters of the western side of Boston Inner Harbor north of the entrance to the Fort point Channel bound by the following points beginning at latitude 42°21'32" N, longitude 071°02'50" W; thence to latitude 42°21'33" N, longitude 071°02'44" W; thence to latitude 42°21'26" N, longitude 071°02'36" W; thence to latitude 42°21'26" N, longitude 071°02'53" W; thence to point of origin. Datum NAD83.

(2) The area is principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors will be allowed. Fixed mooring piles or stakes are prohibited. The anchoring of vessels and placing of temporary moorings will be under the jurisdiction, and at the discretion of the Harbormaster, City of Boston. All moorings shall be so placed that no vessel, when moored, will at any time extend beyond the limits of the area.

Dated: November 25, 2008.

Dale G. Gabel,

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

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