

TABLE 49.11—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS—Continued

| Requirement                                                                                                                                                                                                  | Type of mine rescue team |           |           |                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----------|-----------|-----------------|
|                                                                                                                                                                                                              | Mine-site                | Composite | Contract  | State-sponsored |
| Team members must be knowledgeable about the operations and ventilation of each covered mine.                                                                                                                | YES .....                | YES ..... | YES ..... | YES.            |
| Team must include at least two active employees from each covered large mine and at least one active employee from each covered small mine.                                                                  | .....                    | YES ..... | .....     |                 |
| Team must be comprised of persons with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team. | .....                    | .....     | YES ..... |                 |

All mine operators must provide for two certified mine rescue teams. Large mine operators shall provide one team that is either an individual mine-site mine rescue team or a composite team.

Team members of State-sponsored teams who are full-time State employees whose primary job duties include (1) inspecting underground mines for compliance with State safety laws or (2) training mine rescue teams or (3) other similar duties that would enhance their mine rescue knowledge may substitute their regular job experience for 50 percent of the training requirements for non-State employee mine rescue team members, except these team members must participate in two local mine rescue contests and train at the covered mine in accordance with § 49.20(b).

■ 3. In § 49.20, revise paragraphs (b)(1) and (b)(4) to read as follows:

**§ 49.20 Requirements for all coal mines.**

(b) \* \* \*

(1) *Mine-site team.* Members who work at the mine and participate in mine rescue training at the mine at least annually at large mines and at least semi-annually at small mines.

\* \* \* \* \*

(4) *State-sponsored team.* Members who are state employees and participate in mine rescue training at each covered mine at least annually at large mines and at least semi-annually at small mines.

\* \* \* \* \*

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**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:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent regulated navigation area (RNA) in certain 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 throughout the anchorage basin during the Town of Chesapeake City's Canal Day event.

**DATES:** This rule is effective on June 17, 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-2008-1119 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-2008-1119 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 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@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 March 12, 2009, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD" in the **Federal Register** (74 FR 10695). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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**. Delaying the effective date of this rule would be contrary to the public interest since immediate action is needed to ensure the boating public's safety during the Canal Day festivities taking place in June 2009. Congestion created by the influx of boats and visitors for Canal Day festivities would substantially raise the risk of accidental

drownings, personnel injuries, boat fires, boat capsizings and sinkings, and boating collisions, and the congestion would make response to such incidents much more difficult.

### 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. This congestion substantially raises the risk of accidental drownings, personnel injuries, boat fires, boat capsizings and sinkings, and boating collisions, and the congestion makes response to such incidents much more difficult.

For example, on a typical weekend 10 to 15 boats anchor in the basin, which is approximately 420 yards in length and 170 yards in width. However, during Canal Day waterfront events, the number of boats anchoring in and around the basin far exceeds this number. 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 (rafted). These boats accounted for approximately 600 visitors. Persons on recreational vessels or other water craft began arriving on the Wednesday before the festival, and by that evening, large lines of rafted boats filled the anchorage basin, exceeding the safety limits two days before the event.

The Coast Guard has the authority under 33 Code of Federal Regulations part 165 to impose appropriate controls on activities that may pose a threat to persons, vessels and facilities under its jurisdiction. 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. Therefore, the Coast Guard is now establishing a permanent 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 rule will control vessel movement during this event, in order to promote maritime safety, and to protect the environment and maritime public from the potential hazards associated with a large gathering of recreational vessels and other watercraft in a confined area.

### Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

### 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. 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 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 will 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.

### 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 023-01 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves certain regulations for vessels navigating the waters of the Chesapeake and Delaware Canal and fits within the category of paragraph 34(g) because it establishes a regulated navigation area.

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 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. 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) 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.

(4) All vessels and persons within this regulated navigation area must comply with any additional instructions of the District Commander or the designated representative.

(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: May 26, 2009.

**Fred M. Rosa, Jr.,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0345]

RIN 1625-AA00

#### Safety Zone; San Diego Symphony Orchestra; San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone, upon the navigable waters of the San Diego Bay in support of the San Diego Symphony Orchestra. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 8:30 p.m. on July 3, 2009 through 10 p.m. on September 6, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0345 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-2009-0345 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are 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 Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101-1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail, Petty Officer Shane

Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278-7262, e-mail [Shane.E.Jackson@uscg.mil](mailto:Shane.E.Jackson@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

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

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** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

##### Background and Purpose

The San Diego Symphony Orchestra and Copley Symphony Hall is sponsoring the San Diego Symphony Orchestra, which will include a fireworks presentation conducted from a barge in San Diego Bay. The barge will be located near the navigational channel in the vicinity of North Embarcadero. The safety zone will be an 800-foot radius around the firing barge. The sponsor will provide a chase boat to patrol the safety zone and inform vessels of the safety zone. This safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway.

##### Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8:30 p.m. to 10 p.m. on July 3, July 5, July 10-11, July 17-18, July 24-25, July 31, August 1, August 7-8, August 14-15, August 21-22, August 28-29, and September 4-6, 2009. The limits of the

safety zone will be an 800-foot radius around the anchored firing barge in approximate position 32°42'12" N, 117°10'01" W.

The safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, or his designated representative.

##### 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.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

##### 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 will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM)