

SUMMARY: The Coast Guard is revising the Regulated Navigation Area in Hampton Roads, Virginia, by imposing vessel reporting requirements and speed limit restrictions in certain areas of the port. These measures are necessary because of the unique physical characteristics and resources contained in the port. These regulations will enhance the safety and security of vessels and property in the Hampton Roads port complex while minimizing, to the extent possible, the impact on commerce and legitimate waterway use.

DATES: This rule is effective June 15, 2003.

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 CGD05-02-099 and are available for inspection or copying at Marine Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Lewis Fisher, Jr., Marine Safety Division, Fifth Coast Guard District, (757) 398-6387, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 29, 2003, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area in Hampton Roads, VA in the **Federal Register** (68 FR 22648). We received three letters commenting on the proposed rule. No public hearings were requested, and none were 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**. This rule will make permanent the two temporary final rules (68 FR 2201 and 68 FR 2884) discussed below. The temporary final rules will expire on June 15, 2003. During the effective period of these temporary final rules, dating back to October and December of 2001 respectfully, we have received no comments concerning the proposed changes to the Regulated Navigation Area in Hampton Roads, VA. This final rule is necessary to ensure the continued safety and security of vessels operating within the Port of Hampton Roads, VA. There have been recent reports, all a matter of public record that indicate a continuing high risk of terrorist activity in the United States. Delay in implementing this rule, would therefore be contrary to public interest.

We have issued a notice of proposed rulemaking; withdrawal (68 FR 34370) which was published on June 9, 2003, for a duplicate notice of proposed rulemaking entitled "Regulated Navigation Area in Hampton Roads, VA" (68 FR 27948) which was published on May 22, 2003. The May 22, 2003, notice of proposed rulemaking was inadvertently published after the initial April 29, 2003, publication of a substantially similar notice of proposed rulemaking entitled "Regulated Navigation Area in Hampton Roads, VA" (68 FR 22648). The Coast Guard has only withdrawn the May 22, 2003, notice of rulemaking. The April 29, 2003, notice of proposed rulemaking is the basis of this rule.

Background and Purpose

History

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism*, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk

of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to 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 October 24, 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 53712). The temporary final rule required that all vessels of 300 gross tons or greater reduce speed to eight knots 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. In June 2002, this temporary final rule was extended in the **Federal Register** (67 FR 41337). On December 22, 2002, we republished this temporary final rule in the **Federal Register** (68 FR 2201).

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 definitions 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. The port security measures require that vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons combined, check-in with the Captain of the Port or his representative at least 30 minutes prior to entry to obtain permission to transit the Regulated Navigation Area. The vessel may enter the Regulated