

Navigation Area upon authorization and approval by the Captain of the Port or his representative. A vessel that receives permission to enter the Regulated Navigation Area remains subject to a Coast Guard port security boarding. Thirty (30) minutes prior to getting underway, vessels departing or moving within the Regulated Navigation Area must contact the Captain of the Port or his representative via VHF-FM channel 13 or 16, call (757) 444-5209/5210 or (757) 668-5555 for the Captain of the Port Duty Officer. 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 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.

This rule will make permanent the above two temporary rules as well as update the Regulated Navigation Area to encompass aspects of navigational safety and security in a post September 11, 2001, environment. The reporting and speed limit restrictions will enable the COTP to closely monitor vessel movements in the Regulated Navigation Area.

Discussion of Comments and Changes

We received two letters on the eight knots speed limit for vessels over 300 gross tons in the Norfolk Harbor Reach channel. The comments stated that in some instances it is difficult for vessels to operate at this reduced speed. Depending on individual ship construction and engine type, eight knots may be near or at the lower limit of speed necessary to maintain positive control of a vessel's steering system. The comments stated that when a vessel is transiting with the current, it may be necessary to operate at a "dead slow" bell to maintain an eight knot speed, which may limit steering capability and introduce a safety concern. The Coast Guard agrees with these comments and has changed the speed restriction in the Norfolk Harbor Reach channel from eight knots to ten knots.

We received one letter with four comments on specific regulations. The first comment regarded the expansion of the Regulated Navigation Area to twelve nautical miles offshore, noting that vessels over 300 gross tons that are transiting the coast without intent to enter the Port of Hampton Roads would still have to request permission from the Joint Harbor Operations Center if they

would be passing within 12 nautical miles. This is the intent of the rule. To increase maritime domain awareness, the Coast Guard desires that all vessels over 300 gross tons contact the Joint Harbor Operations Center so that their intent of transit may be ascertained. This increases the Coast Guard's ability to detect potential security risks to the port as early as possible.

The second comment stated that the requirement for vessels over 300 gross tons to contact the Joint Harbor Operations Center for permission to enter the Regulated Navigation Area is redundant with separate advance notice of arrival requirements. The comment stated that the Coast Guard should coordinate local and national regulations. The Coast Guard believes that these regulations are both coordinated and complementary. When vessels over 300 gross tons give advance notice of arrival, their expected arrival date and time are provided in a daily list to the Joint Harbor Operations Center. When a specific vessel calls to request permission to enter the Regulated Navigation Area, the Joint Harbor Operations Center is able to rapidly verify that the vessel is expected. This procedure provides a positive measure of security to the port, in that the Joint Harbor Operations Center can identify an unexpected arrival of a vessel over 300 gross tons.

The third comment stated that the security provisions of the regulation seemingly allow members of the Coast Guard to board vessels without a valid purpose and without identification. The Coast Guard has an overall methodology for managing security in the port. Random vessel boardings are a defined part of that methodology. Therefore, all vessel boardings conducted by Coast Guard boarding teams are sanctioned and valid in nature. All Coast Guard personnel will have proper identification at all times, and Coast Guard vessels will be properly marked and will be flying the Coast Guard ensign.

The fourth comment concerned the requirement to provide photo identification and a valid purpose to board vessels over 300 gross tons, asking if this requirement applied at dockside, shipyards and for passenger ferries. This is the intent of the rule. We do expect this requirement to be fully enforced for vessels over 300 gross tons at dockside. Regarding shipyards, we recognize that persons go on and off ships in repair status constantly. We expect that individual shipyard security programs will manage who is in the shipyard at all times and will ensure compliance with this requirement. The rule does

apply to passenger ferries, recognizing that there are currently no passenger ferries over 300 gross tons that make routine stops within the Regulated Navigation Area. It is possible that a passenger ferry over 300 gross tons could operate within the Regulated Navigation Area, and the Coast Guard would expect compliance with the regulation. Operators of ferries over 300 gross tons that anticipate conducting passenger operations within the Regulated Navigation Area are encouraged to contact the Marine Safety Office Hampton Roads if they have concerns with this rule.

Finally, we have re-arranged the definitions section of the regulations so that the definitions are in alphabetical order. No other changes were made.

Discussion of Rule

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).

Regulatory Evaluation

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is not necessary. The speed limit restriction for the Norfolk Harbor Reach would apply to vessels 300 gross tons or greater. The speed limit requirements would only be in effect for less than 4 miles, and based on the typical vessel speeds we expect delays for vessels to be less than 5 minutes in each direction. The port security measures will affect only those vessels in excess of 300 gross tons that enter or move within the Port of Hampton Roads. The additional changes to this rule clarify and simplify existing regulations, and remove unnecessary restrictions.

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