

requires marketers to make certain disclosures clearly and conspicuously? If so, why, and how? If not, why not?

(15) What potentially unfair or deceptive practices concerning the marketing of prenotification negative option plans, if any, are not covered by the Rule?

(a) What evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrates whether there is widespread existence of such practices? Please provide this evidence.

(b) What evidence demonstrates that such practices cause consumer injury? Please provide this evidence.

(c) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(16) What potentially unfair or deceptive practices concerning the marketing of negative option plans, not covered by the Rule, are occurring in the marketplace?

(a) What evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrates whether there is widespread existence of such practices? Please provide this evidence.

(b) What evidence demonstrates that such practices cause consumer injury? Please provide this evidence.

(c) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(17) What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(18) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national consistency with respect to the marketing and operation of prenotification negative option plans? If so, please provide that evidence.

(19) Are there foreign or international laws, regulations, or standards with respect to negative option plans that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified in order to harmonize with these international laws, regulations, or

standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(20) Do current or impending changes in technology affect whether and how the Rule should be modified?

#### List of Subjects in 16 CFR Part 306

Negative Options, Trade practices.

**Authority:** 15 U.S.C. 41-58.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0139]

**RIN 1625-AA11**

#### Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes for a rule to prohibit all floating vessels from being within an area in the Inner Harbor Navigation Canal from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. This regulated navigation area would also apply to part of the Harvey Canal, between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway. This action is necessary to protect the high-risk areas in the flood protection for New Orleans. The proposed rule will protect the floodwalls in the designated areas of the Inner Harbor Navigation Canal and the Harvey Canal from damage caused by drifting vessels by excluding vessels from the area under certain weather conditions.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 15, 2009. Requests for public meetings must be received by the Coast Guard on or before June 15, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0139 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Lieutenant Commander (LCDR) Eva Van Camp, Coast Guard; telephone (504) 846-5923; e-mail [Eva.VanCamp@uscg.mil](mailto:Eva.VanCamp@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0139), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by

the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2009-0139" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0139 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before June 15, 2009 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one

would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

During Hurricanes Katrina and Gustav, multiple barges and vessels were moored next to or nearby floodwalls surrounding the city of New Orleans. Following the 2008 hurricane season, the Coast Guard determined there are areas in the New Orleans area that are at high risk of potential damage to floodwalls. If a vessel breaks away and hits a floodwall, there is the possibility for the vessel to damage the floodwall and cause a breach resulting in flooding of areas of New Orleans. This regulated navigation area is needed to protect the floodwalls within the Inner Harbor Navigation Canal (IHNC) and Harvey Canal from potential hazards associated with vessels being in this area during a storm.

#### Discussion of Proposed Rule

All floating vessels are prohibited from being within an area in the IHNC from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. This regulated navigation area would also apply to part of the Harvey Canal, between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway. This rule would be in effect 24 hours prior to expected gale force winds (Yankee Port Condition) through post storm landfall or other hurricane or tropical storm conditions as determined by the Captain of the Port New Orleans, LA.

#### Regulatory Analyses

We developed this proposed 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 proposed 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.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to moor, transit or anchor in the defined area effective 24 hours prior to expected gale force winds (Yankee Port Condition) through post storm landfall or other hurricane or tropical storm conditions as determined by the Captain of the Port New Orleans, LA.

This regulated navigation area would not have a significant economic impact on a substantial number of small entities for the following reasons. This regulated navigation area would be activated 24 hours prior to expected gale force winds (Yankee Port Condition) through post storm landfall or other hurricane or tropical storm conditions as determined by the Captain of the Port New Orleans, LA. Vessels intending to moor, transit, or anchor in the defined area are subject to enforcement. Vessel traffic could find an alternate route for transit or depart the area before the regulated navigation area goes into effect.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Eva Van Camp. The Coast Guard will not retaliate against small entities that question or complain about this

proposed rule or any policy or action of the Coast Guard.

### Collection of Information

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2, Figure 2–1, paragraph 34(g), of the Instruction and neither an environmental assessment nor an

environmental impact statement is required. This rule involves the establishing, disestablishing, or changing a regulated navigation area. A preliminary “Environmental Analysis Check List” supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### 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 proposes to amend 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 § 165.816 to read as follows

#### § 165.816 Regulated Navigation Area: New Orleans Area of Responsibility, New Orleans, LA

(a) Regulated navigation area. The following is a regulated navigation area for the Inner Harbor Navigation Canal from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. This regulated navigation area also applies to part of the Harvey Canal, between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway. It will be in effect 24 hours prior to expected gale force winds (Yankee Port Condition) through post storm landfall, or other hurricane or tropical storm conditions as determined by the Captain of the Port New Orleans, LA.

(b) Unless otherwise authorized by the Captain of the Port New Orleans, LA, all floating vessels are prohibited from being in the Inner Harbor Navigation Canal from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and Inner

Harbor Navigation Canal out to Lake Ponchartrain and the Mississippi River in New Orleans, LA. Also, all floating vessels are prohibited from the Harvey Canal between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway.

(c) These designated areas shall not be used as a safe haven.

(d) *Definitions.* As used in this section.

(1) *The COTP* means The Captain of the Port New Orleans, LA.

(2) *Person in Charge* includes any owner, agent, pilot, master, officer, operator, supervisor, crewmember, dispatcher, or other person navigating, controlling, directing, or otherwise

responsible for the movement, action, securing or security of any vessel, barge, tier, fleet, or fleeting facility subject to the regulation in this section.

(e) *Waivers:* (1) The COTP may, upon written request, except as allowed in paragraph (3) of this subsection, waive any regulation in this section if it is found that the purposed operation can be conducted safely under the terms of that waiver.

(2) Each written request for a waiver must state the need for the waiver and describe the proposed operation.

(3) Under unusual circumstances due to time constraints the person in charge may orally request an immediate waiver from the COTP. The written request

must be submitted within five working days of the oral request.

(4) The COTP may at any time terminate any waiver issued under this subsection.

(f) The COTP will notify the maritime community of periods during which this regulated navigation area will be enforced by providing advance notice through a Marine Safety Information Bulletin and Safety Broadcast Notice to Mariners.

Dated: 29 April 2009.

**J.R. Whitehead,**

*Admiral, U.S. Coast Guard, Commander,  
Eighth Coast Guard District.*

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**BILLING CODE P**