

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 Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further

analysis and documentation under that section.

Under figure 2-1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Section § 100.512 is revised to read as follows:

#### § 100.512 Chesapeake Ultra Triathlon, Choptank River, Cambridge, MD.

(a) *Regulated area.* The regulated area includes all waters of the Choptank River within 200 yards either side of a line drawn northwesterly from a point on the shoreline at latitude 38°33'45" N, 076°02'38" W, thence to latitude 38°35'06" N, 076°04'42" W, a position located at Great Marsh Park, Cambridge, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all persons participating in the Chesapeake Ultra Triathlon swim under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course.

(d) *Enforcement period.* This section will be enforced annually from 6:30 a.m. to 2:30 p.m. on the last Saturday in September. The Commander, Fifth Coast Guard District will publish a Notice of Enforcement in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners every year announcing the dates and times this section is in effect. In 2006 this section will be enforced from 6:30 a.m. to 2:30 p.m. on September 30, 2006.

Dated: June 29, 2006.

**L.L. Hereth,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-06-065]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Choptank River, Cambridge, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary special local regulations during the "Cambridge Offshore Challenge", a marine event to be held over the waters of the Choptank River at Cambridge, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Choptank River during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before August 14, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia

23704–5004, hand-deliver them to Room 416 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–065), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one 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**

On September 23 and 24, 2006, the Chesapeake Bay Powerboat Association will sponsor the “2006 Cambridge Offshore Challenge”, on the waters of the Choptank River at Cambridge, Maryland. The event will consist of approximately 40 offshore powerboats conducting high-speed competitive races between the Route 50 Bridge and Oystershell Point, MD. A fleet of approximately 250 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel

control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

**Discussion of Proposed Rule**

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Choptank River. The temporary special local regulations will be enforced from 10:30 a.m. to 4:30 p.m. on September 23 and 24, 2006, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

**Regulatory Evaluation**

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the Choptank River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

**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 transit or anchor in a portion of the Choptank River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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.

**Assistance for Small Entities**

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 the address listed under **ADDRESSES**. 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 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 Commandant Instruction M16475.ID, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 100.35–T05–065 to read as follows:

#### § 100.35–T05–065 Choptank River, Cambridge, MD.

(a) *Definitions:* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the 2006 Cambridge Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(b) *Regulated area:* A regulated area is established for all waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD. All coordinates reference Datum: NAD 1983.

(c) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. on

September 23, 2006 to 4:30 p.m. on September 24, 2006.

Dated: June 29, 2006.

**L.L. Hereth,**

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

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AM37

### Home Schooling and Educational Institution

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its adjudication regulation regarding the definition of a child for purposes of establishing entitlement to additional monetary benefits for a child who is home-schooled. VA proposes to define educational institutions to include home-school programs that meet the legal requirements of the States (by complying with the compulsory attendance laws of the States) in which they are located.

**DATES:** Comments must be received by VA on or before September 11, 2006.

**ADDRESSES:** Written comments may be submitted by: mail or hand-delivery to the Director, Regulations Management (OOREG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or, through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AM37." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Maya Ferrandino, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** A veteran who is entitled to compensation under the provisions of 38 U.S.C. 1114 or 1134 is also entitled, under certain circumstances, to additional compensation for dependents, including

a child. A veteran who is entitled to pension under the provisions of 38 U.S.C. 1521 also is entitled to a higher annual rate of pension because of his or her dependents, including a child. Additional dependency and indemnity compensation and death pension may also be payable based on the number of the surviving spouse's dependent children. In addition, under certain circumstances, a deceased veteran's children may be entitled to these benefits in their own right.

A child is defined in 38 U.S.C. 101(4)(A)(iii) to include a person who is unmarried, and, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution. The implementing regulation is at 38 CFR 3.57(a)(1)(iii).

Section 104(a) of title 38, United States Code, provides that, for the purpose of determining whether benefits are payable (except those under chapter 35, title 38, United States Code) for a child over age eighteen and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institute, university or other educational institution, the Secretary may approve or disapprove such educational institutions.

In a precedent opinion dated March 19, 1998 (VAOPGCPREC 3-98), VA's General Counsel interpreted the term "educational institution" to include only institutions that are similar in type to the institutions specifically enumerated in 38 U.S.C. 104(a). The General Counsel discussed the definition of "institution" and additionally concluded that a person who is receiving instruction in a home-school program is not pursuing a course of instruction at an educational institution and therefore does not qualify as a child within the meaning of 38 U.S.C. 101(4)(A)(iii).

On March 8, 2000, VA published a final rule amending 38 CFR 3.57(a)(1)(iii) to provide a definition of education institution, and specifically excluded home-school programs from the scope of the term "educational institution." In publishing the amendment as a final rule rather than going through notice and comment under the Administrative Procedure Act, VA stated that the rule interpreted statutory provisions and made non-substantive changes.

In *Theiss v. Principi*, 18 Vet. App. 204 (2004), the United States Court of Appeals for Veterans Claims (Court) invalidated VAOPGCPREC 3-98 and the March 8, 2000 rulemaking that excluded

home-school programs from the definition of "educational institution." Although the holding in *Theiss* was based on the Veterans Court's disagreement with VA's decision to publish the amendment to § 3.57(a)(1)(iii) as a final rule without first inviting public comment, the Court also discussed the underlying validity of the rule's exclusion of home-school programs. The Court raised concerns regarding the basis for the General Counsel's interpretation of "educational institution" in VAOPGCPREC 3-98 and the focus in that precedent opinion on the characteristics that differentiated a home-school program from the specifically enumerated educational institutions found in section 104(a) of title 38. According to the Court, home schooling has important aspects in common with the enumerated programs in section 104(a): "They are all educational programs; they all have instructors and instructional material; and they all involve some form of accreditation." 18 Vet. App. at 211.

We propose to amend 38 CFR 3.57 to define educational institution, and to include home-school programs as educational institutions. We propose that the definition will apply to this section and to 38 CFR 3.667, School attendance, which is a corresponding regulation regarding effective dates for awards based on a child's school attendance.

The Court in *Theiss* discussed various dictionary definitions for the term "educational institution." "Educational institution" has been defined as "[a] school, seminary, college, university, or other educational facility." It is also defined as "[a]n institution for the teaching and improvement of its students or pupils; a school, seminary, college, or university \* \* \* Art galleries, museums, public libraries, even labor union buildings have at times been held to be educational institutions." A "facility" is defined as "a building, special room, etc. that facilitates or makes possible some activity." The Court also noted that "institution" has been variously defined as: an established organization or corporation (as a college or university) especially of a public character; something that has been established, particularly a place where an educational or charitable enterprise is conducted; and an "establishment \* \* \* devoted to the promotion of a particular object." The Court noted that certain dictionaries define "establishment" to include "a household", and define "organization" to include a group of persons organized for a particular purpose. The Court