

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 Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, 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, under the Instruction, 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)(g), of the Instruction, from further environmental documentation.

A final environmental analysis checklist and a final 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, and Waterways.

Words of Issuance and Proposed Regulatory Text

■ 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; 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. A new temporary § 165.T11–014 to read as follows:

§ 165.T11–014 Safety Zone; Festival of Sail 2008 Ship's Parade; San Diego Harbor, San Diego, CA.

(a) *Location.* The limits of the moving safety zone are as follows: The route would start at 32°37.15' N, 117°14.07' W and would proceed northeast between green Buoy #3 and red Buoy #4 at 32°38.12' N, 117°13.74' W, then north between green Buoy #5 and red Buoy #6 at 32°39.14' N, 117°13.51' W, then north through the harbor channel to 32°42.07' N, 117°13.90' W, and then northeast to 32°43.11' N, 117°12.71' W, and then east to 32°43.13' N, 117°11.12' W, and finally southeast to the Coronado Bridge at 32°41.45' N, 117°09.18' W. The safety zone will encompass 1000 yards forward, 200 yards each side, and 500 yard aft of each vessel participating in the parade.

(b) *Enforcement Period.* This section will be enforced from 10 a.m. to 1 p.m. on August 20, 2008. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary,

and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander. The Patrol Commander may be contacted via VHF–FM channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: June 10, 2008.

C. V. Strangfeld,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0180]

RIN 1625–AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor during the movements of the historic sloop-of-war USS CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during two tows of the vessel in Baltimore, Maryland; one from its berth at Baltimore's Inner Harbor to a berth at the South Locust Point Marine Terminal, and the other from the South Locust Point Marine Terminal to its berth at Baltimore's Inner Harbor. This action will restrict

vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during these events.

DATES: This rule is effective from 5 p.m. on August 8, 2008 through 11 a.m. on August 10, 2008.

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-2008-0180 and are available online at <http://www.regulations.gov>. This material is 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 Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226-1791 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 Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576-2674 or (410) 576-2693. 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 April 15, 2008, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD" in the *Federal Register* (73 FR 20220). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The USS CONSTELLATION Museum is planning to conduct a ceremony in the Port of Baltimore, Maryland, involving the sloop-of-war USS CONSTELLATION on Friday, August 8, 2008. Scheduled events include a four-hour tow of the USS CONSTELLATION beginning at 6 p.m., from its berth at Pier 1 Inner Harbor to the Locust Point Cruise Ship Terminal berth at the South Locust Point Marine Terminal, with an onboard salute with navy pattern cannon while the historic vessel is positioned off Fort McHenry National Monument and Historic Site. A one-

hour return tow of the CONSTELLATION is scheduled for Sunday, August 10, 2008. Departure from the Locust Point Cruise Ship Terminal will occur at 7 a.m. and arrival at Pier 1 Inner Harbor at 8 a.m. For both tows, the historic Sloop-of-War USS CONSTELLATION will be towed "dead ship," which means that the vessel will be underway without the benefit of mechanical or sail propulsion. While berthed at the Locust Point Cruise Ship Terminal, the vessel will participate in the commissioning ceremonies for the U.S. Navy's new Arleigh Burke class Aegis guided missile destroyer USS STERETT, DDG 104. The Coast Guard anticipates a large recreational boating fleet during these events, scheduled on a weekend during the summer in Baltimore, Maryland. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor.

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. A problem with the number of the rule (.08 versus .05) was discovered and corrected.

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. There is little vessel traffic associated with recreational boating and commercial fishing in the area during the effective period.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate, remain or anchor within certain waters of the Patapsco River, Northwest Harbor and Inner Harbor, in Baltimore, Maryland, from 5 p.m. through 11 p.m. on August 8, 2008 and from 6 a.m. through 11 a.m. on August 10, 2008. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river and harbors to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone.

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 Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, 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, under the Instruction, 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)(g.), of the Instruction, from further environmental documentation. This rule establishes a safety zone.

A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and 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; 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.T05–019 to read as follows:

§ 165.T05–019 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) Definitions. For the purposes of this section:

(1) *Captain of the Port Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore, Maryland to act on his or her behalf.

(2) *USS CONSTELLATION “turn-around” participants* means the USS CONSTELLATION, its support craft and the accompanying towing vessels.

(b) Location. The following area is a moving safety zone: all waters within 200 yards ahead of, 100 yards outboard and 100 yards aft of the historic Sloop-of-War USS CONSTELLATION, surface to bottom, while operating in the Inner Harbor, the Northwest Harbor and the Patapsco River.

(c) Regulations:

(1) The general regulations governing safety zones, found in Sec. 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) With the exception of USS CONSTELLATION “turn-around” participants, entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port Baltimore, Maryland to seek permission to transit the area. The Captain of the Port Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz). Upon being

hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) Effective periods. This section will be effective from 5 p.m. on August 8, 2008 and through 11 a.m. on August 10, 2008.

Dated: June 12, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0490]

RIN 1625-AA00

Safety Zone; Erie Summer Festival of the Arts, Presque Isle Bay, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Presque Isle Bay, Erie, PA. This zone is intended to restrict vessels from a portion of Presque Isle Bay during the June 28, 2008, Erie Summer Festival of the Arts fireworks event. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 10 p.m. to 11 p.m. on June 28, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0490 and are 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 U.S. Coast Guard Sector Buffalo, 1 Fuhrmann

Boulevard, Buffalo, NY 14203 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Commander Joseph Boudrow, Prevention Division, U.S. Coast Guard Sector Buffalo, at 716-843-9572. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective fewer than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port Buffalo has determined that fireworks launches proximate to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Erie Summer festival of the Arts fireworks display. The fireworks display will occur between 10 p.m. and 11 p.m. on June 28, 2008.

The safety zone for the fireworks will encompass all waters of Lake Erie, Presque Isle Bay, Erie, PA, within a 420 ft radius of position 42°07'45" N, 080°06'20" W.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

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 may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake Erie, Presque Isle Bay, Erie, PA, between 10 p.m. and 11 p.m. on June 28, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone. The Coast