

### 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 Department of Homeland Security Management Directive 5100.1 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because it creates a safety zone. An environmental analysis checklist and a 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, Security measures, 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–190 to read as follows:

#### § 165.T11–190 Safety Zone; Sea World Labor Day Fireworks, Mission Bay, San Diego, California.

(a) *Location.* The following area is a safety zone: All waters of Mission Bay, from surface to bottom, within 600 feet of the barge at an approximate position of 32°46'03" N, 117°13'11" W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 10 p.m., each day, on September 5, 2009 through September 7, 2009. 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, or petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels must 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 must proceed as directed.

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

Dated: July 6, 2009.

**T.H. Farris,**

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

[FR Doc. E9–18629 Filed 8–4–09; 8:45 am]

BILLING CODE 4910–15–P

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2009–0685]

RIN 1625–AA00

#### Safety Zone: USCG Barque Eagle Transits of Rockland Harbor, ME, Portland Harbor, ME and Portsmouth Harbor, NH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone excluding all vessels within a 100 yard radius of the U.S. Coast Guard Barque EAGLE during the vessel's transit in Rockland Harbor, Penobscot Bay, Casco Bay and Portland Harbor in

Maine as well as during its transit of Portsmouth Harbor, NH. This safety zone is needed to protect spectators, event safety vessels and others in the maritime community from the safety hazards created by sailing a large vessel in close proximity to smaller vessels. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Sector Northern New England or his designated representative.

**DATES:** This rule is effective from 8 a.m. on July 24, 2009 until 6 p.m. on August 10, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0685 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0685 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Chief Petty Officer Randy Bucklin, U.S. Coast Guard Sector Northern New England, Waterways Management Division, telephone (207) 741-5440; e-mail

[randy.bucklin@uscg.mil](mailto:randy.bucklin@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

The Coast Guard is issuing this temporary final rule for the moving safety zone without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the details regarding USCG Barque EAGLE's sail through the various harbors in Maine and in Portsmouth New Hampshire were not available in

time to give the public notice and an opportunity to comment thus making issuance of an NPRM impractical. Further, a cancellation or delay of the EAGLE's sail to accommodate a notice and comment period is contrary to the public's interest in ensuring the safety of spectators, event safety vessels and other users of the waterway.

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**. In addition to the reasons stated above, a delay or cancellation of the EAGLE's sail to accommodate 30 days for publication before the rule becomes effective is contrary to the public interest. Further, immediate action is needed to ensure a safe, vessel free zone exists around this large sailing vessel as it transits the various harbors.

##### **Background and Purpose**

The EAGLE is a large, steel hull sail training ship that is limited in its ability to quickly maneuver around smaller vessels. USCGC Barque Eagle will be making port calls in Rockland Harbor, ME and Portland Harbor ME as well as a port call in Portsmouth NH as part of the marine event "The Tall Ships Visit to Portsmouth Harbor, NH". This safety zone is required to protect persons and vessels from the safety hazards associated with a large sailing vessel's limited maneuverability.

##### **Discussion of Rule**

The Coast Guard is establishing a temporary moving safety zone excluding all vessels within a 100 yard radius of the USCGC Barque Eagle during the transit to the CG Moorings in Rockland Harbor, ME (44-069.33N 069-06.09W), as it transits outbound into the main channel in Penobscot Bay, as it transits inbound to State Pier in Portland Harbor, ME (43-39.38N 070-14.45W), as it transits outbound Casco Bay to Portland Head Light, inbound to Main State Pier in Portsmouth, NH (43-05.03N 070-45.65W) for "The Tall Ships visit to Portsmouth Harbor" marine event while the event is in progress, and as it transits outbound Portsmouth Harbor to the 2KR buoy. This safety zone is needed to protect spectators, event sponsors' safety vessels, and others in the maritime community from the safety hazards that may arise from an event of this type. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Sector Northern New England or his designated representative.

##### **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.

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The effect of this rule will not be significant for the following reasons: The safety zones will be of limited duration. The events are designed to avoid, as much as practicable, deep draft, fishing, and recreational boating traffic routes. Vessels may be authorized to transit the zone with permission of the Captain of the Port, Sector Northern New England. Additionally, maritime advisories will be broadcast during the duration of the enforcement periods.

##### **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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the safety zones. However, this rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the areas, the ample space available for vessels to maneuver and navigate around the zones, and advance notifications will be made to the local community by marine information broadcasts.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect 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 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. This rule involves creation of a temporary safety zone for a limited period of time. An environmental analysis checklist and a 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 recordkeeping 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. 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0685 to read as follows:

#### § 165.T01–0685 Safety Zone; USCG Barque Eagle transits of Rockland Harbor, ME, Portland Harbor, ME and Portsmouth Harbor, NH.

(a) Location. The following area is a safety zone: All navigable waters within 100 yards in all directions of the United States Coast Guard Barque EAGLE (USCGC EAGLE) during its transit and port calls in Rockland, ME, Portland, ME and Portsmouth, NH for “The Tall Ships Visit to Portsmouth Harbor, NH”.

(b) Enforcement periods:

(1) This rule will be enforced from 8 a.m. on July 24, 2009 to 4 p.m. on July 27, 2009 in Rockland Harbor, ME;

(2) This rule will be enforced from 8 a.m. on July 31, 2009 through 4 p.m. on

August 3, 2009 in Portland Harbor, ME; and,

(3) This rule will be enforced from 6 a.m. August 7, 2009 through 6 p.m. on August 10, 2009 in Portsmouth, NH.

(c) Regulations:

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone by any person or vessel are prohibited unless authorized by the Captain of the Port (COTP), Sector Northern New England or the COTP's designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone may contact the COTP or the COTP's designated representative at telephone number 207-767-0303 or designated representative on VHF Channel 13 (156.7 MHz) or VHF channel 16 (156.8 MHz) to seek permission to do so. If permission is granted, all persons and vessels must comply with the instructions provided by the COTP or the COTP's designated representative.

(d) Definitions.

(1) *Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port (COTP).

Dated: July 24, 2009.

**B.J. Downey, Jr.,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Sector Northern New England.*

[FR Doc. E9-18631 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-15-P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2009-32 and CP2009-43; Order No. 256]

#### Express Mail and Priority Mail Contract

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding Express Mail & Priority Mail Contract 7 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements under the law.

**DATES:** Effective August 5, 2009 and is applicable beginning July 27, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, General Counsel,

202-789-6820 or  
*stephen.sharfman@prc.gov.*

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 74 FR 33482 (July 13, 2009).

- I. Introduction
- II. Background
- III. Information Request
- IV. Comments
- V. Commission Analysis
- VI. Ordering Paragraphs

#### I. Introduction

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 7 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

#### II. Background

On July 2, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, *et seq.*, to add Express Mail & Priority Mail Contract 7 to the Competitive Product List.<sup>1</sup> On July 6, 2009, the Postal Service filed a revised version of its filing which includes attachments inadvertently omitted from the July 2, 2009 request.<sup>2</sup> The Postal Service asserts that the Express Mail & Priority Mail Contract 7 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009-32.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* The contract has been assigned Docket No. CP2009-43.

On July 8, 2009, the Postal Service filed under seal revised versions of the financial analysis workbooks originally filed under seal on July 2, 2009.<sup>3</sup>

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail & Priority Mail Contract 7 and certification of the Governors' vote;<sup>4</sup> (2) a redacted version of the

<sup>1</sup> Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 7 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 2, 2009.

<sup>2</sup> Errata to Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 7 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 6, 2009 (Request).

<sup>3</sup> See Notice of the United States Postal Service of Filing Under Seal of Revised Financial Analysis Workbooks for Express Mail & Priority Mail Contract 7, July 8, 2009 (Revised Workbooks).

<sup>4</sup> Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among

contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;<sup>5</sup> (3) requested changes in the Mail classification Schedule product list;<sup>6</sup> (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>7</sup> and (5) certification of compliance with 39 U.S.C. 3633(a).<sup>8</sup>

In the Statement of Supporting Justification, Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See Id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2-3.

In Order No. 240, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>9</sup>

#### III. Information Request

On July 14, 2009, the Chairman issued an information request seeking responses to 6 questions.<sup>10</sup> The information request was filed under seal. *Id.* On July 20, 2009, the Postal

other things, that the contract is not risk free, but concludes that the risks are manageable.

<sup>5</sup> Attachment B to the Request.

<sup>6</sup> Attachment C to the Request.

<sup>7</sup> Attachment D to the Request.

<sup>8</sup> Attachment E to the Request.

<sup>9</sup> PRC Order No. 240, Notice and Order Concerning Express Mail & Priority Mail Contract 7 Negotiated Service Agreement, July 7, 2009 (Order No. 240).

<sup>10</sup> Chairman's Information Request No. 1 and Notice of Filing of Questions Under Seal, July 14, 2009 (CHIR No. 1).