

### 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 that 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 involves the establishment of 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. 1231; 46 U.S.C. Chapters 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.T09-0718 to read as follows:

#### § 165.T09-0718 Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY.

(a) *Location.* The safety zone will encompass all waters of the Upper Niagara River, North Tonawanda, NY starting at position 42° 03'36" N, 078° 54'45" W to 43° 03'09" N, 078°55'21" W to 43° 03'00" N, 078° 53'42" W to 43° 02'42" N, 078° 54'09" W. (DATUM:NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced from 10 a.m. on August 20, 2011 until 6 p.m. on August 21, 2011.

#### (c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within the safety zone established by this section is

prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 8, 2011.

**S.M. Wischmann,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2011-21186 Filed 8-18-11; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-0426]

RIN 1625-AA00

#### Safety Zone; Patuxent River, Patuxent River, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone during the "NAS Patuxent River Air Expo '11," which consists of aerial practices, performance demonstrations and air shows, to be held over certain waters of the Patuxent River adjacent to Patuxent River, Maryland from September 1, 2011 through September 4, 2011. This rule is necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in portions of the Patuxent River during the event.

**DATES:** This rule is effective from September 1, 2011 through September 4, 2011.

**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–2011–0426 and are available online by going to <http://www.regulations.gov>, inserting USCG–2011–0426 in the “Keyword” box, and then clicking “Search.” This material is 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 Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@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**

On June 22, 2011, we published a notice of proposed rulemaking (NPRM) entitled “Safety Zone; Patuxent River, Patuxent River, MD” in the **Federal Register** (76 FR 36447). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone’s intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

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

U.S. Naval Air Station Patuxent River, Maryland is hosting the “NAS Patuxent River Air Expo ’11” on September 3, 2011 and September 4, 2011. The public event will consist of military and civilian aircraft performing low-flying, high-speed precision maneuvers and aerial stunts over both the airfield at Naval Air Station Patuxent River and the waters of the Patuxent River. Federal Aviation Administration restrictions require that portions of the Blue Angels and aerobatic performance boxes take place over the waters of the Patuxent River. In addition to the air show dates,

on September 3, 2011 and September 4, 2011, military and civilian aircraft performing in the air show will conduct practice and demonstration maneuvers and stunts over both the airfield at Naval Air Station Patuxent River and specified waters of the Patuxent River. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard proposes to temporarily restrict vessel traffic on specified waters of the Patuxent River in the vicinity of the air shows, practices and demonstrations, and during other scheduled activities related to the air show. To address safety concerns during the event, the Captain of the Port, Baltimore is establishing a safety zone upon certain waters of the Patuxent River.

##### **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.

##### **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. Although this safety zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

##### **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 might be small entities: The owners or operators of vessels intending to operate or transit through or within the safety zone during the enforcement period. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. Smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone. Maritime advisories will be widely available to the maritime community before the effective period.

##### **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 (adjusted for inflation) 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 cause 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 establishing a temporary 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 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. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0426 to read as follows:

### § 165.T05–0426 Safety Zone; Patuxent River, Patuxent River, MD.

(a) *Regulated area.* The following locations are regulated areas:

(1) All waters of the lower Patuxent River, near Patuxent River, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Patuxent Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N, longitude 076°25′47″ W; thence to latitude 38°17′47″ N, longitude 076°26′00″ W; thence to latitude 38°18′09″ N, longitude 076°25′40″ W; thence to latitude 38°18′00″ N, longitude 076°25′25″ W, located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland.

(2) All waters of the lower Patuxent River, near Patuxent River, Maryland, located north of the West Patuxent Basin at Naval Air Station Patuxent River, within an area bounded by a line drawn from a position at latitude 38°18′04″ N, longitude 076°27′35″ W; to latitude 38°18′09″ N, longitude 076°27′33″ W; thence to latitude 38°17′51″ N, longitude 076°26′22″ W; thence to latitude 38°17′46″ N, longitude 076°26′23″ W; thence to point of origin, located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions.* As used in this section:

(1) *Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the safety zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Baltimore or his designated

representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

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

(d) *Enforcement periods.* This section will be enforced as follows:

(1) During the air show practice from 8 a.m. until 6 p.m. on September 1, 2011.

(2) Air show practice and modified show from 9 a.m. until 6 p.m. on September 2, 2011.

(3) Twilight performance from 4:30 p.m. until 8:30 p.m. on September 2, 2011.

(4) Air show performances from 8 a.m. until 7 p.m. on September 3, 2011 and from 8 a.m. until 7 p.m. on September 4, 2011.

Dated: August 4, 2011.

**Mark P. O'Malley,**

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

[FR Doc. 2011-21185 Filed 8-18-11; 8:45 am]

**BILLING CODE 9110-04-P**

---

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 1 and 2

RIN 2009-AN72

#### Release of Information From Department of Veterans Affairs Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) regulations governing the submission and processing of requests for information under the Freedom of Information Act (FOIA) in order to

implement provisions of the OPEN Government Act of 2007, and to reorganize and clarify existing regulations.

**DATES:** *Effective Date:* This final rule is effective September 19, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Catherine Nachmann, Staff Attorney, Office of General Counsel (024), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7684. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On October 14, 2010, VA published a proposed rule in the **Federal Register** (75 FR 63120). We proposed to amend VA's regulations pertaining to release of information under 5 U.S.C. 552 and implementation of the FOIA, which are codified at 38 CFR 1.550 through 1.562. In addition, we proposed to update VA's FOIA regulations to implement FOIA amendments in Open Government Act of 2007, Public Law 110-175. We also proposed to accommodate various means of communication with VA, streamline existing procedures, incorporate changes in the procedural requirements of the FOIA and make VA's procedures easier for the public to understand, and generally reorganize and renumber the applicable provisions. VA provided a 60-day comment period, which ended on December 13, 2010.

We received comments from one commenter, which generally expressed support for the proposed rule. The comments included five recommendations for modification of the proposed-rule provisions. We address each of those recommendations below.

First, the commenter suggested that VA modify proposed § 1.561(h)(2) to direct VA's FOIA professionals to provide requesters with a breakdown of the total fee estimate for their FOIA request. Proposed § 1.561(h)(2) prescribed that under circumstances in which the requester owes a fee, the FOIA Officer will provide the requester with an estimate of the fee. We agree with the commenter that, particularly under certain circumstances, such as where the estimated fee is substantial, a breakdown of the fee would provide more clarification for the requester. We believe that as written, however, § 1.561(h)(2) adequately addresses the needs of the public in receiving an estimate of the fee owed while allowing necessary flexibility. Providing the appropriate detail in a particular estimate will be addressed through training and internal procedural guidance for FOIA Officers. The procedural guidance will be a subject

covered by VA's FOIA Handbook. In our view, the level of detail required for any estimate provided under this final rule will depend upon the complexity of the request. Accordingly, we decline to prescribe a specific standard for the estimates required by § 1.561(h)(2).

Second, while the commenter supported proposed § 1.559(a), which would allow for informal resolution of a request before an appeal in appropriate cases, the commenter recommended that VA add language to this section that also directs requesters to work with VA's FOIA public liaisons to resolve disputes.

We note that VA referred to the availability of FOIA public liaisons in proposed § 1.552(b) in order to advise requesters that public liaisons would be available to assist in the resolution of requests and to refer requesters to VA's FOIA internet home page for additional information. VA intends to provide information regarding public liaisons, as necessary, on its FOIA home page. We also intend to address the role of VA's public liaison personnel in internal guidance. Overall, we are satisfied that the proposal for providing notice regarding public liaisons, without actually requiring requesters to work with liaisons, is consistent with the FOIA, as amended.

Third, proposed § 1.559 addressed appeals of initial agency determinations under the FOIA. The commenter suggested adding language to § 1.559(e) directing VA to work with the Office of Government Information Services (OGIS) to resolve disputes between FOIA requesters and VA as a non-exclusive alternative to litigation. In a related comment, the commenter recommended that the Office of the General Counsel (OGC) provide notice regarding the OGIS mediation program in its final appeal determinations.

The FOIA, as revised, establishes OGIS's authority to provide mediation services. The proposed rule concerned VA's administration of the FOIA. VA proposed to establish binding rules for the public regarding FOIA requests and for VA personnel responsible for processing such requests. Accordingly, the commenter's suggestion in this regard is beyond the scope of this rulemaking.

Regarding the commenter's recommendation that OGC provide notice concerning OGIS mediation, we note that DOJ provided guidance to agencies recommending the inclusion of notice of OGIS mediation services in final agency decisions. VA follows DOJ's guidance and includes OGIS's recommended language in its final agency determinations. Accordingly, we