

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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

#### Energy Effects

We have analyzed this rule under Executive Order 12211, 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

#### 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.

#### 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; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 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 temporary § 165.T05-191 to read as follows:

#### § 165.T05-191 Safety zone; Delaware River

(a) *Location.* The following area is a temporary safety zone: All waters and adjacent shoreline of the Delaware River encompassed from the north end of Pier 80 to south end of Pier 84 extending out 50 yards into the channel.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271-4807.

(2) All persons desiring to transit through the safety zone must contact the Captain of the Port at telephone number (215) 271-4807 or on VHF channel 13 or 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port Philadelphia, PA or designated representative.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHz).

(4) Mariners transiting in the vicinity of the safety zone should maintain the minimum safe speed necessary to maintain navigation.

(c) *Definition.* The Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective period.* This section is effective from September 30, 2004 to February 1, 2005.

Dated: September 30, 2004.

**Jonathan D. Sarubbi,**

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

[FR Doc. 04-22504 Filed 10-5-04; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD05-04-135]

**RIN 1625-AA00**

#### Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on portions of the upper Chesapeake Bay and its tributaries during the movement of the USS CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during the dead ship tow of the vessel from its berth in Baltimore, Maryland to the United States Naval Academy seawall in Annapolis, Maryland, and return. This action will restrict vessel traffic in portions of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River.

**DATES:** This rule is effective from 7 a.m. local time on October 26, 2004 to 5 p.m. local time on November 1, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-04-135 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Waterways Management Branch, Baltimore, Maryland, 21226-1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Houck, at Coast Guard Activities Baltimore, Waterways Management Branch, at telephone number (410) 576-2674 or (410) 576-2693.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On August 2, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD" in the **Federal Register** (69

FR 46122). 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 celebrating the 150th anniversary of the launch of the USS Constellation in 1854, and to commemorate this occasion, is sponsoring a dead ship tow of the historic sloop-of-war USS CONSTELLATION on October 26, 2004, from Baltimore, Maryland to Annapolis, Maryland. The event will mark the 23 years that the ship was stationed at the Naval Academy as a training vessel, from 1871 to 1893. Planned events include an eight-hour dead ship tow of the USS CONSTELLATION with an onboard salute with Navy pattern cannon while off Fort McHenry National Monument and Historic Site. A return dead ship tow of the USS CONSTELLATION to Baltimore, Maryland is expected to occur on November 1, 2004.

The Coast Guard anticipates a large recreational boating fleet during this event. 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, in the approaches to Baltimore Harbor, and the Severn River 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 in the specified areas of the upper Chesapeake Bay and its tributaries.

Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

### Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rule during the comment period published in the NPRM. No public meeting was requested, and none was held. As a result, no substantive change to the proposed regulatory text was made.

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

The Coast Guard received no comments on the proposed rule during the comment period published in the NPRM. As a result, no substantive change to the proposed regulatory text was made.

### 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 or operators of vessels intending to operate or anchor in portions of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River, Maryland. 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 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 owned by small entities, may transit around the zone and request permission from the Captain of the Port Baltimore on a case-by-case basis to enter the zone.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this 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 Mr. Ronald Houck, at Coast Guard Activities Baltimore, Waterways Management Branch, at telephone number (410) 576–2674.

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).

### 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, 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)(g), of the Instruction, from further environmental documentation. This regulation establishes a safety zone. A final "Environmental Analysis Check List" 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, 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T05–135 to read as follows:

#### § 165.T05–135 Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD.

(a) *Definitions.* (1) *Captain of the Port.* For the purposes of this section, the term Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, Coast Guard Activities Baltimore to act on his or her behalf.

(2) *USS CONSTELLATION dead ship tow participants.* For the purposes of this section, the term USS CONSTELLATION dead ship tow participants includes the USS CONSTELLATION, and its accompanying towing and pre-designated emergency egress vessels.

(b) *Location.* The following area is a moving safety zone: all waters of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River, from

surface to bottom, within 200 yards ahead of and 100 yards outboard and aft of the historic sloop-of-war USS CONSTELLATION, while operating from Baltimore, Maryland to Annapolis, Maryland, and return.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF channels 16 and 13. The Captain of the Port can be contacted at (410) 576–2693.

(3) No vessel movement is allowed within the safety zone unless expressly authorized by the Captain of the Port or his designated representative.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 5 p.m. local time on October 26, 2004, and from 7 a.m. to 5 p.m. local time on November 1, 2004.

Dated: September 23, 2004.

**Curtis A. Springer,**

*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

[COTP San Francisco Bay 04–025]

RIN 1625–AA00

#### Safety Zone; San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final rule.

**SUMMARY:** The Coast Guard is establishing a temporary fixed safety zone within the navigable waters adjacent to Alameda Point, San Francisco Bay, California, during the filming of a movie scene involving pyrotechnics. The safety zone is necessary to provide for the safety of mariners transiting in the vicinity of the filming location and for the safety of the actors and technicians working with the pyrotechnics. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.