

deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 30, 2010.

David M. Frank,

Bridge Administrator.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0179]

RIN 1625-AA00

#### Safety Zone; Fireworks Display, Patuxent River, Solomons Island Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone upon specified waters of Solomons Island Harbor, a tributary of the Patuxent River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from discharge barge located in Solomons Island, Calvert County, Maryland. This safety zone is intended to protect the maritime public in a portion of Solomons Island Harbor.

**DATES:** This rule is effective from 7:30 p.m. through 10:30 p.m. on April 16, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0179 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0179 in the "Keyword" box, and then clicking "Search." 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 Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; 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

The Coast Guard is issuing this temporary final rule 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 it is contrary to public interest to delay the effective date of this rule. Delaying the effective date would be contrary to the safety zone's intended objectives since immediate action is needed to protect persons and vessels against the hazards associated with a fireworks display on navigable waters. Such hazards include premature detonations, dangerous projectiles and falling or burning debris.

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 involved in the event, and enhancing public and maritime safety.

### Basis and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled event.

### Discussion of Rule

To celebrate its 30th Year Anniversary Opening, the Tiki Bar at Solomons Island, Maryland will sponsor a fireworks display from a barge located adjacent to Molly's Leg in Solomons Island Harbor scheduled on Friday,

April 16, 2010 at approximately 8:45 p.m.

The Coast Guard is establishing a temporary safety zone on certain waters of the Solomons Island Harbor, within a 100 yards radius of a fireworks discharge barge in approximate position latitude 38°19'21" N, longitude 076°27'16" W, located at Solomons Island Harbor, Maryland (NAD 1983). The temporary safety zone will be enforced from 7:30 p.m. through 10:30 p.m. on April 16, 2010. The effect of this temporary safety zone will be to restrict navigation in the regulated area during the fireworks display. No person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of Solomons Island Harbor outside the safety zone. Notification of the temporary safety zone will be provided to the public via marine information broadcasts.

### 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 will restrict access to the area, the effect of the rule will not be significant because: (i) There is little vessel traffic associated with commercial fishing and recreational boating in the area, (ii) vessels can transit waters outside the safety zone, (iii) the safety zone is of limited duration and limited size, and (iv) the Coast Guard will give advance notice to mariners via maritime advisories so mariners can 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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate, transit, or anchor in a portion of the Solomons Island Harbor, at Solomons Island, MD, from 7:30 p.m. through 10:30 p.m. on April 16, 2010. This 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. In addition, before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway to allow mariners to make alternative plans for transiting the affected area.

#### 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 (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 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. This rule involves establishing a temporary safety zone to protect the public from dangers associated with a fireworks display.

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;

Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0179 to read as follows:

**§ 165.T05–0179 Safety Zone; Fireworks Display, Patuxent River, Solomons Island Harbor, MD.**

(a) *Regulated Area.* The following area is a safety zone: All waters in Solomons Island Harbor, within a 100 yards radius of a fireworks discharge barge in approximate position latitude 38°19'21" N, longitude 076°27'16" W, located at Solomons Island, Maryland (NAD 1983).

(b) *Regulations.* The general regulations found in § 165.23 of this part apply to the area described in paragraph (a) of this section.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port Baltimore.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at 410–576–2693 or on VHF–FM marine band radio channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.* *Captain of the Port Baltimore* 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 to act on his behalf.

*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.

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

(e) *Enforcement period.* This section will be enforced from 7:30 p.m. through 10:30 p.m. on April 16, 2010.

Dated: March 25, 2010.

**Mark P. O'Malley,**

*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–2010–0133]**

**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 movement of the historic sloop-of-war USS CONSTELLATION on May 27, 2010. This action is necessary to provide for the safety of life on navigable waters during the tow of the vessel from its berth at the Inner Harbor in Baltimore, Maryland, to a point on the Patapsco River near the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland, and its return. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during the event.

**DATES:** This rule is effective from 2 p.m. May 27, 2010 through 7 p.m. June 3, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0133 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0133 in the “Keyword” box, and then clicking “Search.” 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.

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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 involved in the event, and enhancing public and maritime safety.

**Background and Purpose**

The Historic Ships in Baltimore Museum is planning to conduct a “turn-around” ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on Thursday, May 27, 2010. Planned events include a three-hour, round-trip tow of the USS CONSTELLATION in the Port of Baltimore, with an onboard salute with navy pattern cannon while the historic vessel is positioned off Fort McHenry National Monument and Historic Site. Beginning at 3 p.m., 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.