

a.m., from May 15 to September 30 from 10 p.m. to 6 a.m., and from 8 p.m. on December 24 until and including 6 a.m. on December 26 of every year; and shall open on signal at all other times.

Dated: January 4, 2010.

**Wayne E. Justice,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.*

[FR Doc. 2010-1264 Filed 1-22-10; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-1130]

RIN 1625-AA00

#### Safety Zone; Baltimore Captain of Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in all navigable waters of the Captain of the Port Baltimore zone. The temporary safety zone restricts vessels from transiting the zone during the effective period, unless authorized by the Captain of the Port Baltimore, or his designated representative. This safety zone is necessary to protect mariners from the hazards associated with ice in the navigable waterway.

**DATES:** This temporary interim rule is effective in the CFR on January 25, 2010 until April 15, 2010. This temporary interim rule is enforceable with actual notice by Coast Guard personnel beginning on January 6, 2010. Comments and related material must reach the Coast Guard on or before February 24, 2010 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-1130 using any one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary interim rule, call or e-mail 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 or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-1130), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2009-1130" in the "Keyword"

box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2009-1130" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### **Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Regulatory Information**

The Coast Guard is issuing this temporary interim 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 any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest. Immediate action is needed to mitigate the potential safety hazards associated with ice in the navigable waterway to life and property.

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 unexpected nature and growth of ice formation in the Upper Chesapeake Bay and its tributaries and the Chesapeake and Delaware (C & D) Canal, the safety zone is necessary to protect life and property. Therefore a 30-day notice is impracticable.

### Background and Purpose

During a moderate or severe winter, frozen waterways present numerous hazards to vessels. Ice in a waterway may hamper a vessel's ability to maneuver, and could cause visual aids to navigation to be submerged, destroyed or moved off station. Ice abrasions and ice pressure could also compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach.

When ice conditions develop to a point where vessel operations become unsafe, it becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. A safety zone is a tool available to the Captain of the Port (COTP) to restrict and manage vessel movement when hazardous conditions exist. The COTP Baltimore is establishing a safety zone within all navigable waters of the COTP Baltimore zone that will restrict access to certain vessels meeting certain conditions specified. Those vessels prohibited from entering the safety zone will be specified via broadcast notice to mariners and marine safety information bulletins.

Ice generally begins to form in the Upper Chesapeake Bay and its tributaries, including the C & D Canal, in late December or early January. During a moderate or severe winter, ice in navigable waters can become a serious problem, requiring the use of Federal, State and private ice breaking

resources. The Commander, Coast Guard Sector Baltimore will use his COTP authority to promote vessel safety in ice-congested waters and the continuation of waterborne commerce throughout the cold weather months.

Ice fields in the Upper Chesapeake Bay and its tributaries move with prevailing winds and currents. Heavy ice buildups can occur in the C & D Canal, from Town Point Wharf to Reedy Point. Other areas that are commonly affected by high volumes of ice are, the Elk River, Susquehanna River, Patapsco River, Nanticoke River, Wicomico River, Tangier Sound, Pocomoke River and Sound, and the Potomac River. Once ice buildup begins it can affect the transit of large ocean-going vessels. This regulation is intended to mitigate the threat ice in the COTP Baltimore zone poses to the maritime public.

### Discussion of Rule

A safety zone is being established encompassing the COTP Baltimore Zone, as described in 33 CFR 3.25–15. The Captain of the Port Baltimore anticipates only having to enforce certain parts of the regulated area at certain times. The purpose of this regulation is to promote maritime safety, and to protect mariners transiting the area from the potential hazards due to ice conditions that become a threat to navigation. The COTP will notify the maritime community, via marine broadcasts, of the location and thickness of the ice as well as the ability of vessels to transit through the safety zone depending on the prevailing ice conditions. Prevailing ice conditions will be categorized as Condition One, Condition Two, or Condition Three.

Ice Condition One is an emergency condition in which ice has largely covered the regulated area. Under these conditions, convoys may be required and restrictions based on shaft horsepower and vessel transit may be imposed by the COTP on certain vessels seeking to enter the safety zone.

Ice Condition Two is an alert condition in which at least 2 inches of ice begins to form in the regulated area. The COTP Baltimore may impose restrictions, including but not limited to, those based on shaft horsepower and hull type restrictions for certain vessels seeking to enter the safety zone.

Ice Condition Three is a readiness condition in which weather conditions are favorable for the formation of ice in the regulated area. Daily reports for the Coast Guard Stations and commercial vessels are monitored, and no limitations for vessels seeking to enter the zone based on vessel traffic, hull

type or shaft horsepower are anticipated.

### Regulatory Analyses

We developed this interim 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 regulation could hinder or prevent traffic from transiting the COTP Baltimore Zone, the effect of this regulation will not be significant because there is little vessel traffic associated with recreational boating and commercial fishing during the effective period.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule 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 the regulated area, from January 6, 2010 until April 15, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities due to a lack of seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period. Although the safety zone will apply to the entire COTP Baltimore Zone, the Captain of the Port Baltimore anticipates only having to enforce certain parts of the regulated area at certain times. Traffic will be allowed to pass through the zone with the permission of the COTP Baltimore. Also, the COTP will notify the maritime community, via marine broadcasts, of the location and thickness of the ice, as

well as the ability of vessels to transit through the safety zone.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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 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 Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, 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 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–1130 to read as follows:

#### § 165.T05–1130 Safety zone; Baltimore Captain of the Port Zone.

(a) *Regulated area.* The following area is a safety zone: The navigable waters of the Captain of the Port Baltimore Zone, as described in 33 CFR 3.25–15.

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

(1) Vessels are prohibited from entering into or moving within the safety zone unless they meet the requirements set forth by the Captain of the Port (COTP) Baltimore for the prevailing ice conditions. Requirements for entry during periods when the safety

zone is enforced will be described via Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22A (157.1 MHz). Requirements may include, but are not limited to, the use of convoys, restrictions on shaft horsepower, and hull type restrictions, dependent on the prevailing ice conditions and vessel type.

(2) Persons desiring to transit in the safety zone not meeting the requirements established by the COTP Baltimore must contact the COTP Baltimore or his designated representative at telephone number 410-576-2693 or on VHF-FM channel 16 (156.8 MHz) to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the COTP Baltimore or his designated representative.

(3) The Coast Guard vessels enforcing this safety zone can be contacted on VHF-FM marine band radio 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 light, or other means, the operator of a vessel shall proceed as directed. The COTP Baltimore and his designated representatives can be contacted at telephone number 410-576-2693.

(4) The COTP Baltimore or his designated representative 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 22A (157.1 MHz).

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

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

*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 (b) of this section.

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

(e) *Enforcement period.* This section will be enforced from January 6, 2010 until April 15, 2010.

Dated: January 6, 2010.

**Mark P. O'Malley,**

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

[FR Doc. 2010-1265 Filed 1-22-10; 8:45 am]

**BILLING CODE 9110-04-P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1280

[FDMS Docket NARA-09-003]

RIN 3095-AB60

### Photography in Public Exhibit Space

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** NARA has revised its regulations on the use of film, photographic and videotape equipment inside the National Archives Building in Washington, DC. Filming, photographing, and videotaping for personal use will be prohibited in exhibits of the National Archives Experience (NAE) in Washington, DC, including the Declaration of Independence, the Constitution and the Bill of Rights (known as the Charters of Freedom) in the Rotunda of the National Archives Building. In 2003 NARA installed exhibit cases for displaying the Charters and other NAE documents to provide better clarity for viewing the exhibits. NARA seeks to ensure the necessary protection for the documents from the cumulative effects of photographic flash and to enhance the overall visitor experience.

**DATES:** This rule is effective February 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Redman at telephone number 301-837-3174 or fax number 301-837-0319.

**SUPPLEMENTARY INFORMATION:** On July 31, 2009, NARA published a proposed rule in the **Federal Register** (74 FR 38153) for a 60-day public comment period. This proposed rule banned all filming, photographing and videotaping for personal use in exhibit areas of the National Archives Experience (NAE) in Washington, DC. The public comment period closed on September 29, 2009. In response, NARA received comments from three private citizens. All three of the commenters were opposed to the proposed rule.

Each of the commenters suggested that NARA install filters to the existing exhibit casing in order to protect the documents from damaging exposure to light sources. NARA used filters in earlier exhibit cases. Although, filters can remove high energy visible light and ultraviolet radiation, which are the most damaging light components, they do so by blocking some light in the blue and green part of the spectrum diminishing visibility of the display. NARA's 2003 renovations to the Rotunda included the

removal of previously installed green filters to enhance the documents' visibility and show the true colors of the documents thereby improving the visitors' experience. For document protection, the National Archives now filters exhibit lighting at its source to remove all ultraviolet and high energy visible light.

One commenter suggested that the inability to take photographs would create problems for tourists and professional photographers. To be clear, professional photographers and members of the media will continue to be permitted to take photographs and video footage of the exhibits and documents on display in the NAE with special permission and with available light, e.g. without the use of any flash or steady light source, just as they have been allowed to do in the past pursuant to 36 CFR 1280.52. This final rule applies only to the general public, who are the source of most photographic flash from either accidental or intentional action.

Another comment submitted in response to the proposed rule questioned whether or not camera flash was truly harmful to documents. Current flash technology generally relies on halogen bulbs and the flash discharge contains a significant percent of ultraviolet radiation, a high energy radiation that can cause ink to fade and damage to paper and other supports. About a million visitors come to the National Archives exhibitions. The camera flashes that occur now, despite posted signs, add up to many thousands per year. We estimate 50,000 flash discharges in the Rotunda annually under present rules. The extra light and ultraviolet radiation from these flashes hastens damage to the documents.

Several comments raised concerns about the enactment of the proposed rule on the quality of the visitor experience. One letter suggested that every American needs to be encouraged to visit and photograph the documents on display. Another suggested that NARA must make the documents accessible and available to the public, and that by prohibiting photography, NARA will make its exhibits less useful to tourists because they will no longer be able to record their memories. The commenter further claimed that visitors are forced to shuffle past the documents at a pace that ensures only a brief glimpse of the documents before being asked to move along. Without a photograph to fall back on, their visit to NAE will only be a blurry memory.

NARA does not believe that this rule will create problems for tourists. The agency believes this rule creates a better