

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.

[FR Doc. 04–22505 Filed 10–5–04; 8:45 am]

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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.

DATES: This rule is effective from 12 p.m. September 30, 2004, to 12 p.m. on October 6, 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 the docket [COTP San Francisco Bay 04-025] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign John Bannon, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3082.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close the area in order to protect the maritime public from the hazards associated with the pyrotechnics being used.

For the same reasons stated above, 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**.

Background and Purpose

Three Strikes Productions is filming portions of an upcoming major motion picture in and around the Aircraft Carrier HORNET Museum located at Pier Three, Alameda Point, San Francisco Bay, California. The special effects include simulated fire and explosion scenes conducted in the waterway in the vicinity of the HORNET, between Piers Two and Three at Alameda Point. Set up of equipment and filming is scheduled to take place from September 30 to October 6, 2004. This temporary safety zone is necessary to protect the public, along with vessels and other property from the hazards associated with the event.

Discussion of Rule

The safety zone will encompass the navigable waters around and under the filming area, which is located between

Piers Two and Three at Alameda Point, CA from September 30 to October 6, 2004. Although actual filming will only occur during evening hours, the safety zone is required for the entire period to protect the equipment associated with the pyrotechnics and filming. The pyrotechnics featured in the scenes to be filmed at this location consist of burning propane to simulate a fire. The propane fire will be short in duration, and is not expected to impact the waterway or the marine environment.

The safety zone will be located shoreward of a line drawn between Alameda Point Pier 2 in approximate position 37° 46'28.0" N, 122° 18'20.0" W and Alameda Point Pier 3 in approximate position 37° 46'20.0" N, 122° 18'19.0" W. Entry into, transit through or anchoring within the safety zone is prohibited, unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local law enforcement agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Title 33, Code of Federal Regulations, Section 165.23, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section may be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, is punishable by civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment from 5 to 10 years and a maximum fine of \$250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation also faces imprisonment from 10 to 25 years.

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).

Although this safety zone will restrict boating traffic within San Francisco Bay, the effect of this regulation will not

be significant as the safety zone will encompass only a small portion of the waterway and will be short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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.

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. § 605(b) that this rule is not expected to have a significant economic impact on a substantial number of entities, some of which may be small entities: The owners and operators of pleasure craft engaged in recreational activities and sightseeing. The safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: Vessel traffic can pass safely around the area, vessels engaged in recreational activities and sightseeing have ample space outside of the safety zone to engage in these activities, and this zone will encompass only a small portion of the waterway for a limited period of time. The maritime public will be advised of the safety zone via public notice to mariners.

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 could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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 because we are establishing a safety zone.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be

available for review in the docket indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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.T11-043 to read as follows:

§ 165.T11-043 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The safety zone will encompass the navigable waters of San Francisco Bay shoreward of a line located between Alameda Point Pier Two in approximate position 37°46'28.0" N, 122°18'20.0" W, and Alameda Point Pier Three in approximate position 37°46'20.0" N, 122°18'19.0" W.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 415-399-3547 or on VHF-FM channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Effective Dates.* The safety zone becomes effective at 12 p.m. on

September 30, 2004, and will remain in effect until October 6, 2004. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

Dated: September 24, 2004.

Gordon A. Loeb,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay, California.

[FR Doc. 04-22508 Filed 10-5-04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 04-093]

RIN 1625-AA00

Safety Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone on the St. Johns River, Jacksonville, FL, for the Navy Sea and Sky Spectacular. The safety zone is needed to protect boaters from the hazards associated with high speed, low flying, aircraft participating in flight demonstrations during the Air Show. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL.

DATES: This rule is effective from noon on October 28, 2004, through 4 p.m. on October 31, 2004.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket [COTP Jacksonville 04-093] and are available for inspection and copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida, 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Carol Swinson at Coast Guard Marine Safety Office Jacksonville, FL, tel: (904) 232-2640, ext. 155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the

Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date is contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, 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**. The Coast Guard will issue a broadcast notice to mariners and may place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

The Coast Guard is establishing a temporary fixed safety zone on the St. Johns River, Jacksonville, FL. The safety zone will be enforced during the 2004 Jacksonville Sea and Sky Spectacular, from noon until 4 p.m. October 28, 2004, through October 31, 2004. The safety zone is needed to protect boaters from the hazards associated with high speed, low flying, aircraft participating in flight demonstrations during the Air Show. The safety zone will originate at position 30°14'37"N, 81°39'45"W, and extend east to 30°14'37"N, 81°38'00"W, then south to 30°13'41"N, 81°38'00"W, then west to 30°13'41"N, 81°39'48"W, then back to the original point. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL.

Regulatory Evaluation

This regulation 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 cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities.

"Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulation will only be enforced for approximately four hours each day it is in effect and the public will be made aware of the closure times via broadcast notices to mariners. The impact on routine navigation is expected to be minimal because vessel traffic is not excessive at that part of the river and traffic may be granted permission to enter the zone by the Captain of the Port or his representative if the situation allows.

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. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 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.