

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(h), of the instruction, an “Environmental Analysis Check List” is not required for this rule. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. Add temporary § 100.35-T05–029 to read as follows:

##### § 100.35–T05–029 Roanoke River, Plymouth, North Carolina.

(a) *Regulated area.* The regulated area includes all waters of Roanoke River commencing at the north river bank at latitude 35°52′20″ N, longitude 076°44′47″ W, thence a line 180 degrees due south across the river to the shoreline thence west along the shoreline to a position located at latitude 35°51′43″ N, longitude 076°43′45″ W, thence 000 degrees due north across the river to the shoreline thence east along the shoreline to the point of origin. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned,

warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any official patrol.

(d) *Enforcement period.* This section will be enforced from 10 a.m. to 8:30 p.m. on June 24, July 22, August 11, 12, 19, September 30 and October 21, 2007.

Dated: March 20, 2007.

**Larry L. Hereth,**

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

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#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 165

[CGD05–07–010]

RIN 1625–AA00

##### Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent 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, annually, on the Friday following Labor Day. 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 return. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before June 8, 2007.

**ADDRESSES:** You may mail comments and related material to Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland, 21226–1791. Coast Guard Sector Baltimore, Waterways Management Division, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, U. S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, 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 Sector Baltimore, Waterways Management Division, at (410) 576–2674 or (410) 576–2693.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–010), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Baltimore, Waterways Management Division, at the address under **ADDRESSES** explaining why one 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**.

##### Background and Purpose

Each year, the USS CONSTELLATION Museum conducts a “turn-around”

ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on the Friday following Labor Day. The annual turning of the USS CONSTELLATION aids in the maintenance of the historic ship by ensuring even weathering of her hull. Planned events include a three-hour, round-trip tow of the 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. 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. The return dead ship tow of the CONSTELLATION to its berth in the Inner Harbor is expected to occur immediately upon execution of a tug-assisted turn-around of the CONSTELLATION on the Patapsco River near Fort McHenry. 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 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 upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor.

#### Discussion of Proposed Rule

The historic sloop-of-war USS CONSTELLATION is towed "dead ship" annually on the Friday following Labor Day, from its berth at Pier 1 in Baltimore's Inner Harbor to a point on the Patapsco River near Fort McHenry National Monument and Historic Shrine, Baltimore, Maryland. The voyage takes place along a planned route of approximately four nautical miles one-way, which includes waters of the Patapsco River, Northwest Harbor and Inner Harbor. After being turned-around, the USS CONSTELLATION is returned to its original berth at Pier 1, Inner Harbor, Baltimore, Maryland.

The safety of dead ship tow participants requires that persons and vessels be kept at a safe distance from the intended route during this evolution. The Coast Guard proposes to establish a moving safety zone around the USS CONSTELLATION dead ship

tow participants annually, between 2 p.m. and 7 p.m., local time, on the Friday following Labor Day, to ensure the safety of participants and spectators immediately prior to, during, and following the dead ship tow. 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.

#### Regulatory Evaluation

This proposed 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate, remain or anchor within certain waters of the Patapsco River, Northwest Harbor and Inner Harbor, in Baltimore, Maryland, from 2 p.m. through 7 p.m., local time, annually on the Friday following Labor Day. 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 and harbors 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 small entities, may transit around the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed 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 the person listed under **FOR FURTHER INFORMATION CONTACT**. 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 proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination 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.

#### Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because the rule establishes a safety zone.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 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 § 165.512 to read as follows:

#### § 165.512 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) *Definitions*. For the purposes of this section:

(1) *Captain of the Port, Baltimore, Maryland* 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, Baltimore, Maryland to act on his or her behalf.

(2) *USS CONSTELLATION "turn-around" participants* means the USS CONSTELLATION, its support craft and the accompanying towing vessels.

(b) *Location*. The following area is a moving safety zone: all waters, from surface to bottom, within 200 yards ahead of or 100 yards outboard or aft of the historic sloop-of-war USS CONSTELLATION, while operating in the Inner Harbor, the Northwest Harbor or the Patapsco River.

(c) *Regulations*. (1) The general regulations governing safety zones, found in § 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) With the exception of USS CONSTELLATION "turn-around" participants, entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port, Baltimore, Maryland. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, persons or vessels shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

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

(e) *Enforcement period*. This section will be enforced from 2 p.m. through 7 p.m., local time, annually on the Friday following Labor Day.

Dated: March 22, 2007.

**Jonathan C. Burton,**

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

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