



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0808]

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 for certain waters of the Patapsco River, Northwest Harbor and Inner Harbor. This action is necessary to provide for the safety of life on the navigable waters at Baltimore, MD, during the movement of the historic sloop-of-war USS CONSTELLATION on October 26, 2017. If necessary, due to inclement weather, the event will be rescheduled for October 27, 2017. This action will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region.

DATES: This rule is effective from 8 a.m. on October 26, 2017, through 1 p.m. on October 27, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0808 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald L. Houck, at Sector Maryland-National Capital Region, Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On September 15, 2017, Historic Ships in Baltimore of Baltimore, MD, notified the Coast Guard that from 9 a.m. to noon on October 26, 2017, it will be conducting a tow of the historic sloop-of-war USS CONSTELLATION in Baltimore, MD, from its berth at the Inner Harbor to a point on the Patapsco River near the Fort McHenry National Monument and Historic Shrine, and its return to its berth at the Inner Harbor.

This rule involves the USS CONSTELLATION “turn-around” cruise, an event that takes place in Baltimore, MD. A permanent safety zone for this rule, with an enforcement period from 2 p.m. through 7 p.m. local time annually on the Thursday before Memorial Day (observed), has been published and is detailed at Title 33 Code of Federal Regulations, section 165.512.

However, due to a change in scheduling, the event this year is planned for October 26, 2017. If necessary, due to inclement weather, the event will be rescheduled for October 27, 2017. The event is scheduled to start at 9 a.m. and the event location remains unchanged.

The Coast Guard is issuing this temporary 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 due to the short time period between event planners notifying the Coast Guard of details concerning the event, on September 15, 2017, and publication of this safety zone. It is impracticable and contrary to the public interest to publish an NPRM to provide a notice and an opportunity for comment period because we must establish this safety zone by October 26, 2017 to ensure the safety of vessels and the navigable waters before, during, and after the scheduled event. Such hazards include vessels colliding, sinking or grounding, creating hazards to navigation, and threatening the marine environment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with a movement of a historic sloop-of-war being towed in confined waters during the boating season in Baltimore, MD.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with the USS CONSTELLATION “turn-around” cruise will be a safety concern for anyone on the Patapsco River, Northwest Harbor and Inner

Harbor. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. through 1 p.m. on October 26, 2017, and, if necessary due to inclement weather, from 8 a.m. through 1 p.m. on October 27, 2017. The safety zone will include all navigable waters within 200 yards ahead of and 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. This location is entirely within the Area of Responsibility of the COTP Maryland-National Capital Region, as set forth at 33 CFR 3.25-15.

This rule requires any unauthorized persons in the regulated area at the time this safety zone is in effect to immediately proceed out of the zone. Except for USS CONSTELLATION “turn-around” participants, and vessels at berth, mooring, or at anchor, this rule temporarily requires all vessels in the designated safety zone as defined by this rule to immediately depart the safety zone. Entry into this safety zone is prohibited, unless specifically authorized by the COTP Maryland-National Capital Region. Coast Guard personnel will be present to prevent the movement of unauthorized persons into the zone. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule. The COTP Maryland-National Capital Region will issue Broadcast Notices to Mariners to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and

Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Patapsco River, Northwest Harbor and Inner Harbor for five hours during the weekday when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 22A about the zone. Such notifications will be updated as necessary, to keep the maritime community informed of the status of the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. 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 in the FOR FURTHER INFORMATION CONTACT section.

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.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. 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.

F. 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 (42 U.S.C. 4321-4370f), and have determined that 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 involves a safety zone lasting

approximately five hours that will prohibit entry within 200 yards ahead of and 100 yards outboard or aft of the historic sloop-of-war USS CONSTELLATION. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0808 to read as follows:

§ 165.T05-0808 Safety Zone; Patapsco River, Northwest and Inner Harbors; Baltimore,

MD.

(a) Definitions. As used in this section:

Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast

Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (b) of this section.

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: The navigable waters 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 safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05.0808.

(2) With the exception of USS CONSTELLATION “turn-around” participants, and vessels at berth, mooring, or at anchor, entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port, Maryland-National Capital Region. All vessels underway within this safety zone at the time it is implemented shall depart the safety zone.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port, Maryland-National Capital Region to seek permission to transit the area. The Captain of the Port, Maryland-National Capital Region can be contacted at telephone number (410) 576-2693 and on Marine Band Radio VHF Channel 16 (156.8 MHz). 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, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port,

Maryland-National Capital Region, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) The COTP Maryland-National Capital Region 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).

(d) Enforcement officials. 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 8 a.m. through 1 p.m. on October 26, 2017, and, if necessary due to inclement weather, from 8 p.m. through 1 p.m. on October 27, 2017.

Dated: September 27, 2017

Lonnie P. Harrison, Jr.
Captain, U.S. Coast Guard
Captain of the Port Maryland-National Capital Region.
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