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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-04-130]

USCG-2004-19416-23

RIN 1625-AA00

Safety Zone; Fireworks Displays, Potomac River, Arlington County, VA and Charles County, MD.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Potomac River. This action is necessary to provide for the safety of life and property during fireworks displays on the Potomac River. The safety zone will allow for control of designated areas of the river and safeguard spectators and participants.

DATES: This rule is effective from 8 p.m. to 11 p.m. on July 10, 2004, with a rain date of July 11, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05-04-130 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226-1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, Coast Guard Activities Baltimore, at (410) 576-2674.

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) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the Federal Register. Publishing a NPRM and delaying its effective date would be contrary to public interest, since there is not sufficient time to publish a proposed rule in advance of the event and immediate action is needed to protect persons and vessels against the hazards associated with a fireworks display from a barge, such as premature detonation or falling burning debris. This safety zone of short duration is needed to provide for the safety of persons and vessels on the Potomac River and the public at large.

Background and Purpose

On July 10, 2004, with a rain date of July 11, 2004, the Alexandria Department of Recreation, Parks and Cultural Activities, in Alexandria, Virginia and Crabmando Watersports Inc. in King George, Virginia, will each sponsor an event that will include a fireworks display launched from a barge on the Potomac River. A fleet of spectator vessels

is anticipated for these events. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards due to a fireworks display from a barge. This rule establishes a safety zone on the waters of the Potomac River, enclosed within the arc of a circle with a radius of 900 feet and with its center located at position 38° 48' 37" N, 077° 02' 02" W, and enclosed within the arc of a circle with a radius of 600 feet and with its center located at position 38° 20' 30" N, 077° 14' 30" W.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on specified waters of the Potomac River. The safety zone will be in effect from 8 p.m. to 11 p.m. on July 10, 2004, with a rain date of July 11, 2004. This safety zone will protect spectators and mariners transiting the area from the potential hazards associated with a fireworks display launched from a barge on the Potomac River. This rule limits access to the safety zone to those vessels authorized by the Captain of the Port Baltimore. Except for persons or vessels authorized by the Captain of the Port Baltimore, no

person or vessel may enter or remain in the zone. The Captain of the Port will notify the maritime community via marine broadcasts of the safety zone.

Regulatory Evaluation

This temporary 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 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.

This rule will affect the following entities, some of

which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Potomac River from 8 p.m. to 11:00 p.m. on July 10, 2004 or July 11, 2004 if the rain date becomes necessary. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for 3 hours late in the evening when vessel traffic is low, vessel traffic not constrained by its draft can pass safely around the safety zone, and the Coast Guard will issue maritime advisories to users of the river before the effective period.

Therefore, 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding this 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 (1-888-743-3247).

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 this rule 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 would not result in such expenditure, we do discuss the effects of this rule

elsewhere in this preamble.

Taking of Private Property

This 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 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 concern 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 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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 M16475.1D, 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. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

List of Subjects

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 temporary § 165.T05-130 to read as follows:

§ 165.T05-130 Safety zone; Fireworks Displays, Potomac River, Arlington County, Virginia and Charles County, Maryland.

(a) Location. The following areas are a safety zone: All waters of the Potomac River enclosed within a 900 foot radius around the position 38° 48' 37" N, 077° 02' 02" W, and the waters enclosed within a 600 foot radius around the position 38° 20' 30" N, 077° 14' 30" W. All coordinates reference Datum NAD 1983.

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

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

(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 by radio on VHF-FM

channel 16.

- (3) All Coast Guard assets enforcing this safety zone can be contacted on VHF 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.

- (1) The 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 Captain of the Port to act on his behalf.

(d) Effective period. This section is effective from 8 p.m. to 11:00 p.m. on July 10, 2004, with a rain date of July 11, 2004.

Dated: JUL '2 2004



Curtis A. Springer
Captain, U.S. Coast Guard
Captain of the Port
Baltimore, Maryland