

**§ 2570.169 Review by the Secretary.**

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

**§ 2570.170 Scope of review.**

The review of the Secretary shall not be a de novo proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

**§ 2570.171 Procedures for review by the Secretary.**

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 23rd day of February 2010.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG-2010-0093]

RIN 1625-AA00

**Safety Zone; NASSCO Launching of USNS Charles Drew, San Diego Bay, San Diego, CA.**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay in support of the NASSCO Ship Launching for the United States Naval Ship (USNS) Charles Drew. The safety zone is necessary to provide for the safety of vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) San Diego or his designated representative.

**DATES:** This rule is effective from 6:30 a.m. through 8:30 a.m. on February 27, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0093 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0093 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego; telephone 619-278-7262, e-mail [Corey.R.McDonald@uscg.mil](mailto:Corey.R.McDonald@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

The Coast Guard is issuing this temporary final 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 the event would occur before the rulemaking process was complete. As such, any delay in the regulation's effective date would be contrary to the public interest, as immediate action is necessary to provide for the safety of vessels and users of the waterway.

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 issuance of final approval was so recent that the rule will be made effective less than 30 days after publication. Any delay in the effective date of this rule will expose vessels and persons of the waterway to dangers posed by ship launchings.

**Background and Purpose**

The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay to contribute to the safety of the USNS Charles Drew and surrounding vessels as this ship launches from NASSCO shipyards. There will be three tugboats to take control of the vessel after the launch. This temporary safety zone is necessary to provide for the safety of the vessels and users of the waterway.

**Discussion of Rule**

The USNS Charles Drew will be launched from NASSCO shipyard into the San Diego Bay the morning of February 27, 2010. The safety zone is required because the vessel's planned launch location is in the maritime navigation channel. The limits of the temporary safety zone include all navigable waters encompassed by the following coordinates:

32°41.39' N, 117°08.66' W;  
32°41.24' N, 117°09.05' W;  
32°41.05' N, 117°08.73' W;  
32°41.20' N, 117°08.34' W;  
thence north along the shoreline to 32°41.39' N, 117°08.66' W.

The safety zone is necessary to provide for the safety of the vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the COTP San Diego or his designated representative. Vessels or persons violating this zone will be

subject to both criminal and civil penalties.

### Regulatory Analyses

We developed this 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified time unless authorized by the COTP San Diego or his designated representative.

### 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 transit or anchor in a portion of the San Diego Bay from 6:30 a.m. to 8:30 a.m. on February 27, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only 2 hours early in the day when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via VHF Channel 16.

### 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 the establishment of 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, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.01.

■ 2. Add § 165.T11-289 to read as follows:

#### § 165.T11-289 Safety Zone; NASSCO Launching of USNS Charles Drew, San Diego Bay, San Diego, CA.

(a) *Location.* The safety zone encompasses the navigable waters encompassed by the following coordinates:

Beginning at 32°41.39' N, 117°08.66' W; thence to 32°41.24' N, 117°09.05' W; thence to 32°41.05' N, 117°08.73' W; thence to 32°41.20' N, 117°08.34' W; thence north along the shoreline back to 32°41.39' N, 117°08.66' W.

(b) *Enforcement Period.* This section will be enforced from 6:30 a.m. until 8:30 a.m. on February 27, 2010. If the event concludes prior to the scheduled

termination time, the COTP will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) No person or vessel may enter or remain in a safety zone without the permission of the COTP or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: February 16, 2010.

D.L. Leblanc,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

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#### DEPARTMENT OF THE INTERIOR

#### National Park Service

#### 36 CFR Part 7

[Docket No. E8-27047J]

RIN 1024-AD71

#### Special Regulation: Areas of the National Park System, National Capital Region; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Correcting amendments.

**SUMMARY:** The National Park Service (NPS) published the final rule governing viewing of the Inaugural Parade by the Presidential Inaugural Committee in the **Federal Register** on November 17, 2008. That document inadvertently left out text that was intended to be retained from the previous regulation. That document also retained a paragraph that

should have been removed. This document makes correcting amendments restoring the missing text to the appropriate paragraph, and removing the unnecessary paragraph.

**DATES:** *Effective Date:* February 26, 2010.

#### FOR FURTHER INFORMATION CONTACT:

National Park Service, Regional Director of the National Capital Region, 1100 Ohio Drive, SW., Room 336, Washington, DC 20242.

#### SUPPLEMENTARY INFORMATION:

On November 17, 2008 (73 FR 67739), the National Park Service published a final rule to revise the special regulations for the National Capital Parks in Washington, DC. The purposes of the revision were to: (1) Clarify the regulations on issuance of permits for events in National Capital Parks, (2) respond to a decision of the U.S. District Court for the District of Columbia related to practice and procedure of permit application processing for the Presidential Inaugural Committee, and (3) provide more public access to park areas along the inaugural parade route. The paragraph revised was entitled "Permit processing".

Through a formatting error, the portion of the paragraph that notified the public of conditions under which a permit could be denied was omitted. That same formatting error resulted in a duplicate paragraph. Paragraph (g)(5)(iv) was revised and redesignated (g)(4)(vi), but the old paragraph (g)(5)(iv) was retained in error. This correction restores the omitted language, unchanged in wording or content, to the paragraph on permit processing, removes the old duplicate paragraph, and redesignates the sections after it to restore correct numbering.

#### Need for Correction

As published and codified, the regulation omitted important information that the public needs in order to plan a demonstration in a time, place, and manner that will increase the chances of approval of the permit by the National Park Service. It also contained a duplicate paragraph that could cause confusion in interpretation of the regulation.

#### List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ In consideration of the reasons stated in the preamble, the National Park Service makes the following correcting amendments to 36 CFR part 7: