

Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374-5066, Telephone number: (202) 685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS STETHEM (DDG 63) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special

function as a naval ship: Annex I paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights; and Annex I paragraph 2(f)(i) pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed

herein will adversely affect the vessel's ability to perform its military functions.

#### List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

#### PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by revising the following entry for *USS STETHEM*:

#### § 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

\* \* \* \* \*

	Vessel	Number	Obstruction angle relative ship's headings
	*	*	*
USS STETHEM	*	DDG 63	108.5 thru 112.50°
	*	*	*

3. Table Five of § 706.2 is amended by revising the entry for *USS STETHEM* to read as follows:

#### § 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

\* \* \* \* \*

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
	*	*	*	*	*
USS STETHEM .....	DDG 63	X	X	X	20.9
	*	*	*	*	*

Dated: February 8, 2002.

**Richard T. Evans,**

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

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#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

[CGD09-02-015]

RIN 2115-AA97

#### Safety Zone; Maumee River, Lake Erie, Ohio

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on

the Maumee River, Toledo, Ohio. This zone is intended to restrict vessels from a portion of the Maumee River during the City of Toledo's May 25th Memorial Day 2002, fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

**DATES:** This rule is effective from 10 p.m., May 25th, 2002, until 11 p.m. May 25th, 2002.

**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

docket [CGD09-02-015] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700 Toledo, Ohio, 43604 between 9:30 A.M. and 2 P.M., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Herb Oertli, Chief of Port Operations, at (419) 418-6050.

**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. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

**Background and Purpose**

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the City of Toledo's May 25th Fireworks. The fireworks display will occur between 10 p.m. until 11 p.m. on May 25, 2002.

**Discussion of Rule**

This safety zone will encompass all waters and the adjacent shoreline of the Maumee River, Toledo, Ohio, Extending from the bow of the museum ship SS WILLIS B. BOYER at 41° 38' 35" N, 083° 31' 54" W, then north north-east to the south end of the City of Toledo Street at 41° 38' 51" N, 083° 31' 50" W, then south-west to Maumee River Buoy #64 (LLNR 6361) at approximate position 41° 38' 48" N, 083° 31' 58" W, then returning south south-east to the museum ship SS WILLIS B. BOYER. These coordinates are based upon North American Datum 1983 (NAD 1983).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on scene patrol personnel. The designated on-scene representative will be the patrol commander. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Toledo or his designated on scene representative. The Captain of the Port or his designated on scene

representative may be contacted via VHF Channel 16.

**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 Transportation (DOT) (44 FR 11040, February 26, 1979). This finding is based on the historical lack of vessel traffic at this time of year.

**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 and operators of vessels intending to transit or anchor in a portion of the Maumee River off Toledo, Ohio.

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 in effect for only a few hours for one event and vessel traffic can pass safely around the safety zone. In the event that shipping is affected by this temporary safety zone, commercial vessels may request permission from the Captain of the Port Toledo to transit through the safety zone.

**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 the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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

Marine Safety Office Toledo (*see ADDRESSES*.)

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**

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

**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 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

## Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

## 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 proposed rule under Executive Order 13211, Action Concerning Regulation that Significantly Affect Energy Supply, Distribution, or Use. We have determined that 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.

## 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, and 33 CFR 1.05-1(g), 6.04-6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09-007 is added to read as follows:

### § 165.T09-007 Safety zone; Maumee River, Lake Erie, Ohio

(a) *Location.* All waters and adjacent shoreline of the Maumee River, Toledo, Ohio, extending from the bow of the

museum ship SS WILLIS B. BOYER at 41° 38' 35" N, 083° 31' 54" W; then north north-east to the south end of the City of Toledo Street at 41° 38' 51" N, 083° 31' 50" W; then south-west to the Maumee River Buoy #64 (LLNR 6361) at approximate position 41° 38' 48" N, 083° 31' 58" W; then returning south south-east to the original starting position on the bow of the Museum ship SS WILLIS B. BOYER (NAD 1983).

(b) *Effective time and date.* This section is effective from 10 p.m. until 11 p.m. on May 25th 2002.

(c) *Regulations.* In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: April 26, 2002.

**David L. Scott,**

*Commander, U.S. Coast Guard, Captain of the Port, Toledo.*

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**BILLING CODE 4910-15-U**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CGD01-01-207]

RIN 2115-AA97

### Security Zone; Seabrook Nuclear Power Plant, Seabrook, New Hampshire

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is extending the effective period for the Seabrook Nuclear Power Plant, Seabrook, New Hampshire security zone. This change will extend the effective period of this temporary final rule until August 15, 2002, allowing adequate time for a proposed permanent rule to be developed through informal rulemaking. This temporary rule will continue to close certain land and water areas in the vicinity of the Seabrook Nuclear Power Plant.

**DATES:** The amendment to § 165.T01-207 is effective May 8, 2002. Section 165.T01-207, added at 66 FR 67488, December 31, 2001, effective December 7, 2001, until June 15, 2002, is extended in effect until August 15, 2002.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8

a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

### FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780-3251.

### SUPPLEMENTARY INFORMATION:

### Regulatory History

On December 31, 2001, the Coast Guard published a temporary final rule (TFR) entitled "Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire" in the **Federal Register** (66 FR 67487). The effective period for this rule was from December 7, 2001 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from waters surrounding the plant. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone. No letters commenting on the present rule have been received from the public.

### Background and Purpose

Due to the terrorist attacks on New York City, New York, and Washington DC, on September 11, 2001 and continued warnings from national security and intelligence officials that future terrorist attacks are possible, heightened security measures are necessary surrounding the Seabrook Nuclear Power Plant. A temporary security zone was implemented around the Seabrook Nuclear Power Plant to protect against possible damage to the