

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 147.T08–849 temporarily added at 75 FR 32273, June 8, 2010, effective from June 8, 2010 to August 26, 2010, will continue in effect through November 26, 2010.

Dated: August 16, 2010.

M.E. Landry,
*Rear Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.*

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

[Docket No. USCG–2010–0719]

RIN 1625–AA00

Safety Zone; Potomac River, St. Mary's River, St. Inigoes, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon specified waters of the St. Mary's River, a tributary of the Potomac River. This action is necessary to provide for the safety of life on navigable waters during military pyrotechnic flare exercises launched from a U.S. Navy helicopter located near St. Inigoes, Maryland. This safety zone is intended to protect the maritime public in a portion of the St. Mary's River.

DATES: This rule is effective from August 24, 2010 through August 27, 2010. This rule may be enforced with actual notice starting on August 16, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0719 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0719 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 Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, e-mail Ronald.L.Houck@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 it is contrary to public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objectives because immediate action is needed to protect persons and vessels against the hazards associated with a military pyrotechnic flare exercise over navigable waters. Such hazards include premature detonations, dangerous projectiles and falling or burning debris.

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**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

Military pyrotechnic flare exercises are necessary to provide testing and demonstration of countermeasures designed for military aircraft survivability and protection. These exercises are sometimes held at locations above or near the navigable waters of the United States. The potential hazards associated with pyrotechnic flares are a safety concern during such exercises. The purpose of

this rule is to promote public and maritime safety during a military pyrotechnic flare exercise, and to protect mariners transiting the area from the potential hazards associated with a pyrotechnic flare exercise, such as the accidental discharge of flares, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled event.

Discussion of Rule

The Naval Air Warfare Center Aircraft Division, at U.S. Naval Air Station Patuxent River, Maryland, will conduct a pyrotechnic flare exercise from an airborne CH–53D Sea Stallion helicopter hovering at a minimum of 1,000 feet above the surface of the St. Mary's River, near St. Inigoes, Maryland. The activity is scheduled for a two hour period on a single day during the week of August 16, 2010, and if necessary due to inclement weather or availability of aircraft, for a two hour period on a single day during the week of August 23, 2010. Due to many limiting factors, including when such flights are identified by the Navy during weekly requests, the Coast Guard can only be provided a 96-hour notification of approved flare-dispensing missions.

The Coast Guard is establishing a temporary safety zone on certain waters of the St. Mary's River, near its confluence with the Potomac River, within a one nautical mile radius of an airborne CH–53D Sea Stallion helicopter in approximate position latitude 38°06'49" N., longitude 76°26'35" W., located approximately 2,300 yards west-northwest of Sage Point, Maryland (NAD 1983). The temporary safety zone will be enforced for a two hour period on a single day during the week of August 16, 2010, and if necessary due to inclement or availability of aircraft, for a two hour period on a single day during the week of August 23, 2010. The effect of this temporary safety zone will be to restrict navigation in the regulated area during the pyrotechnic flare exercise. No person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of the St. Mary's River outside the safety zone. Notification of the temporary safety zone will be provided to the public via marine information broadcasts.

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. Although this safety zone will restrict vessel traffic, there is little vessel traffic associated with commercial fishing, and recreational boating in the area. In addition, the effect of this rule will not be significant because the safety zone is of limited duration and size. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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 operate, transit, or anchor in a portion of the St. Mary’s River, near its confluence with the Potomac River, located near St. Inigoes, Maryland, for a two hour period on a single day during the week of August 16, 2010, and if necessary due to inclement weather or availability of aircraft, for a two hour period on a single day during the week of August 23, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. In addition, before the effective periods, the Coast Guard will issue maritime advisories widely available to users of the waterway to allow mariners to make alternative plans for transiting the affected area.

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 (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.

Taking of Private Property

This rule will not cause 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 that 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 establishing a temporary 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. 0170.1.

■ 2. Add § 165.T05-0719 to read as follows:

§ 165.T05-0719 Safety Zone; Potomac River, St. Mary's River, St. Inigoes, MD.

(a) *Regulated Area.* The following area is a safety zone: All waters in the St. Mary's River, near its confluence with the Potomac River, within a one nautical mile radius of an airborne CH-53D Sea Stallion helicopter in approximate position latitude 38°06'49" N, longitude 76°26'35" W, located approximately 2,300 yards west-northwest of Sage Point, Maryland (NAD 1983).

(b) *Regulations.* The general safety zone regulations found in § 165.23 apply to the safety zone created by this temporary section, § 165.T05-0719.

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

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port Baltimore or his designated representative by telephone at 410-576-

2693 or on VHF-FM marine band radio channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF-FM 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.* *Captain of the Port Baltimore* 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 to act on his behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* 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 for a two-hour period on a single day during the week of August 16, 2010, and if necessary due to inclement weather or availability of aircraft, for a two-hour period on a single day during the week of August 23, 2010.

Dated: August 5, 2010.

Mark P. O'Malley,

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

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POSTAL SERVICE

39 CFR Part 111

Mailing of Cigarettes and Smokeless Tobacco Products to APO/FPO/DPO Destination Addresses

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 503.9 and 601.11 to permit the mailing of cigarettes and smokeless tobacco to APO/FPO/DPO

destination addresses via Express Mail® Military Service or Priority Mail® service with Delivery Confirmation™.

DATES: *Effective Date:* August 27, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Collins, 202-268-5440, Anthony Alverno, 202-268-2997 or Jeff Burger, 202-268-7251.

SUPPLEMENTARY INFORMATION: On May 5, 2010, the Postal Service published a proposed rule in the **Federal Register** (75 FR 24534-24541) to implement the Prevent All Cigarette Trafficking (PACT) Act of 2009, Public Law 111-154. After solicitation and consideration of the comments received in response to the proposed rule, the Postal Service published a **Federal Register** final rule on May 27, 2010 (75 FR 29662-29671) to implement the PACT Act effective June 29, 2010.

The final rule established eligibility requirements under which shipments of cigarettes and smokeless tobacco could be sent via U.S. mail under the PACT Act. One of the exceptions in the PACT Act allows for gift shipments sent by certain individuals. The Postal Service implemented this requirement in the final rule by providing that shipments sent by individuals in non-commercial transactions must be sent by Express Mail with Hold for Pickup for domestic shipments. With respect to shipments to Air Force/Army Post Offices (APOs), Fleet Post Offices (FPOs), or Diplomatic Post Offices (DPOs) destination addresses, the standards in DMM section 601.11.6.2 provided that shipments of cigarettes and smokeless tobacco must be sent via Express Mail. This is consistent with the PACT Act requirement that shipments by certain individuals must be sent using "the systems of the Postal Service that provide for the tracking and confirmation of delivery." 18 U.S.C. 1716E(b)(4)(ii)(IV). Express Mail service offers both tracking and confirmation of delivery and was accordingly required for shipments to APO/FPO/DPO destination addresses.

No comments were received in response to the Postal Service's solicitation for comments on the proposed rule in connection with shipments to APO/FPO/DPO addressees. Subsequent to the publication of the final rule, however, the Postal Service received inquiries from customers concerning the requirement to use Express Mail service for shipments to APO/FPO/DPO destination addresses in Iraq and Afghanistan. In particular, customers advised that Express Mail service is not offered to APO/FPO/DPO destination addresses in certain places where large