

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.ID, 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 because it involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be 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. 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 section § 165.T09-0190 to read as follows:

#### § 165.T09-0190 Safety zone; Marysville Days Fireworks, St. Clair River, Marysville, MI.

(a) *Location.* The safety zone will encompass all U.S. navigable waters on the St. Clair River within a 600 foot radius of the fireworks launch site located on land at position 42°54'25" N, 082°27'58" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 10:15 p.m. through 10:45 p.m. on June 24, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of

this part, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: April 27, 2011.

**E.J. Marohn.**

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

[FR Doc. 2011-12676 Filed 5-23-11; 8:45 am]

**BILLING CODE 9110-04-P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-0390]

**RIN 1625-AA00**

#### Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Great Wicomico River in the vicinity of Mila, VA in support of the Wicomico Community Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Wicomico Community Fireworks. This action is intended to restrict vessel traffic movement on the Great Wicomico River to protect mariners from the hazards associated with fireworks displays.

**DATES:** This rule is effective from 9 p.m. on July 2, 2011, until 10 p.m. on July 3, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0390 and are available online by going to <http://www.regulations.gov>, inserting USCG–2011–0390 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 CWO Carlos Hernandez, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5583, e-mail [Carlos.A.Hernandez@uscg.mil](mailto:Carlos.A.Hernandez@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 any delay encountered in this regulation’s effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters.

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**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the event participants, spectator craft, and other vessels transiting the event area.

##### **Background and Purpose**

On July 2, 2011 the Wicomico Church will sponsor a fireworks display on the

Great Wicomico River at position 37°50′31″ N/076°19′42″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Great Wicomico River within 420 feet of the fireworks launching platform will be temporarily restricted.

##### **Discussion of Rule**

The Coast Guard is establishing a safety zone on specified waters of the Great Wicomico River in the vicinity of Mila, Virginia. The fireworks will be launched from land adjacent to the Great Wicomico River and the safety zone is intended to protect mariners from any fall out that may enter the water. This safety zone will encompass all navigable waters within 420 feet of the fireworks launching platform located at position 37°50′31″ N/076°19′42″ W (NAD 1983). This safety zone will be established in the interest of public safety during the Wicomico Community Fireworks event and will be enforced from 9 p.m. until 10 p.m. on July 2, 2011, with a rain date of 9 p.m. until 10 p.m. on July 3, 2011. Access to the safety zone will be restricted during the specified date and times. Except for individuals responsible for launching the fireworks and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

##### **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 regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

##### **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.

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of the Great Wicomico River from 9 p.m. until 10 p.m. on July 2, 2011, with a rain date of 9 p.m. until 10 p.m. on July 3, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration. (ii) Before the enforcement period of July 2, 2011, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

##### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 affect 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.ID, 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 establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be 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, and 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; 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 Temporary § 165.T05–0390, to read as follows:

#### § 165.T05–0390 Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate position 37°50′31″ N/ 076°19′42″ W (NAD 1983) in Mila, VA.

(b) *Definition:* For purposes of enforcement of this section, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation:*

(1) 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, Hampton Roads or his designated representatives.

(2) The operator of any vessel 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 U.S. Coast Guard Ensign; and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 638–6637.

(4) U.S. Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period:* This regulation will be enforced from 9 p.m.

until 10 p.m. on July 2, 2011, with a rain date of 9 p.m. until 10 p.m. on July 3, 2011.

Dated: May 12, 2011.

**Mark S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

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**BILLING CODE 9110-04-P**

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

#### 33 CFR Part 334

#### Pamlico Sound and Adjacent Waters, NC; Danger Zones for Marine Corps Operations

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending its regulations to establish a new danger zone. This danger zone will enable the Marine Corps to control access and movement of persons, vessels and objects within the danger zone during live fire training exercises. The amendment is necessary to protect the public from potentially hazardous conditions which may exist as a result of use of the area by the United States Marine Corps.

**DATES:** *Effective date:* June 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922, or Mr. Richard Spencer, Wilmington District, Corps of Engineers, Regulatory Division, at (910) 251-4172 or by e-mail at [richard.k.spencer@usace.army.mil](mailto:richard.k.spencer@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the danger zone regulations at 33 CFR part 334 by adding 334.420 (b)(1)(v) which establishes an Intermittent Danger Zone abutting the existing 1.8 mile Danger Zone [§ 334.420(b)(1)(i)] in the Pamlico Sound and adjacent waters, Carteret County, North Carolina. The public is currently restricted from access to the existing 1.8 mile radius circular area and has limited access to three additional 0.5 mile radius circular danger zones [§ 334.420(b)(1)(ii)(iv)] but has unrestricted access to the remaining surrounding waters. The current

military training mission requires enhanced public safety and protection of vessels that operate in the vicinity of the Bombing Target-11 range. This danger zone in the Pamlico Sound abuts the existing 1.8 mile radius danger zone and extends out to 2.5 miles from the common center point. Establishment of this additional danger zone will allow the Marine Corps to minimize the public safety hazard resulting from the increased use of .50 Caliber weapons firing from rotary-wing aircraft and small boats during training exercises at Bombing Target-11 Range.

The proposed rule was published in the October 22, 2010, issue of the **Federal Register** (75 FR 65278) with the docket number COE-2010-0037 and one comment was received. The commenter expressed concerns over the loss of access to fishing areas as a result of the intermittent danger zone. The Marine Corps changed the number of consecutive days of operations per month from seven to five as a result of comments received during their National Environmental Policy Act process and public outreach. This modification was designed to minimize the impact on the public while allowing the Marine Corps to provide appropriate training for our service personnel as is required by law. The intermittent expansion of the prohibited area would be implemented between 4 p.m. to 11 p.m., for a maximum of five consecutive weekdays (no weekends) per month, from February through November. The additional 3,360-acre water area would be temporarily removed from public use a maximum of 50 seven-hour periods per year.

#### Procedural Requirements

##### A. Review Under Executive Order 12866

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

##### B. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The economic impact of the amendment to this danger zone does not have an effect on the public, does not result in a navigational hazard, or interfere with existing waterway traffic. Therefore, this final rule does not have

a significant economic impact on small entities.

##### C. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined the amendment does not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period closed. The environmental assessment may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

##### D. Unfunded Mandates Act

This final rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

#### List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps is amending 33 CFR part 334 to read as follows:

#### PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR Part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. In § 334.420 add paragraphs (b)(1)(v) and (b)(2)(iii) to read as follows:

##### § 334.420 Pamlico Sound and adjacent waters, N.C.; danger zones for Marine Corps operations.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) The waters within a circular band with an inner radius of 1.8 statute miles and an outer radius of 2.5 statute miles having its center at latitude 35°02'12", longitude -76°28'00".

(2) \* \* \*

(iii) The areas described in paragraph (b)(1)(v) of this section shall be used as a strafing area. Practice and dummy ammunition will be used. Operations will be conducted on five consecutive