

Small Business Regulatory Enforcement Fairness Act of 1996.

*Regulatory Flexibility Act/Executive Order 13272: Small Business*

Since this rulemaking is exempt from 5 U.S.C. 553, and no other law requires the Department to give notice of proposed rulemaking, this rulemaking also is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272, section 3(b).

*Executive Order 12866, as Amended*

The Department of State does not consider this final rule to be a "significant regulatory action" under Executive Order 12866, as amended, § 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive order.

*Executive Order 12988*

The Department has reviewed this final rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This final rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

*Executive Orders 12372 and 13132*

This Final Rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities do not apply to this regulation.

*Paperwork Reduction Act*

This Final Rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 62**

Cultural exchange programs, Reporting and recordkeeping requirements.

**PART 62—EXCHANGE VISITOR PROGRAM**

■ Accordingly the interim rule amending 22 CFR part 62 which was published at 73 FR 34861 on June 19, 2008 is adopted as final without change.

Dated: March 30, 2009.

**Stanley S. Colvin,**

*Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2008-0189]

**RIN 1625-AA00**

**Safety Zones; Fireworks Displays Within the Fifth Coast Guard District**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing 73 permanent safety zones for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. Entry into or movement within these zones during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

**DATES:** This rule is effective May 8, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0189 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the

right side of the screen, inserting USCG-2008-0189 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: 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 and the Fifth Coast Guard District, Prevention Division, 431 Crawford Street, Portsmouth, VA 23704 between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, Inspections and Investigations Branch, at (757) 398-6204. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On April 15, 2008, we published a notice of proposed rulemaking (NPRM) entitled, Safety Zones; Fireworks Displays within the Fifth Coast Guard District in the **Federal Register** (73 FR 20223). On November 14, 2008, we published a Supplemental notice of proposed rulemaking (SNPRM) entitled Safety Zones; Fireworks Displays within the Fifth Coast Guard District in the **Federal Register** (73 FR 67444). We received two comments on the NPRM. No public meeting was requested, and none was held.

**Background and Purpose**

In this rule, the Coast Guard revises the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. For a description of the geographical area of the Fifth District and subordinate Coast Guard Sectors—Captain of the Port Zones, please see 33 CFR 3.25. Currently there are 49 permanent safety zones established for fireworks displays occurring throughout the year that are held on an annual basis and normally in one of these 49 locations.

The Coast Guard revision of the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays, adds 24 new locations and modifies five previously established locations within the geographic

boundary of the Fifth Coast Guard District. This rule increases the total number of permanent safety zones to 73 locations for fireworks displays within the boundary of the Fifth Coast Guard District.

This rule adds 24 new safety zone locations to the permanent safety zones listed in 33 CFR 165.506. The new safety zones are listed in the following table.

Table of Newly Established Fireworks Safety Zones

1. Delaware River, Chester, PA
2. North Atlantic Ocean Avalon, NJ
3. Barnegat Bay, Barnegat Township, NJ
4. North Atlantic Ocean, Cape May, NJ
5. Great Egg Harbor Inlet, Margate City, NJ
6. Metedeconk River, Brick Township, NJ
7. North Atlantic Ocean, Ocean City, NJ
8. North Atlantic Ocean, Bethany Beach, DE
9. Baltimore Inner Harbor, Patapsco River, MD
10. Anacostia River, Washington, D.C.
11. Potomac River, Charles County, MD
12. Potomac River, National Harbor, MD
13. Patuxent River, Calvert County, MD
14. Patuxent River, Solomons Island, Calvert County, MD
15. Appomattox River, Hopewell, VA
16. John H. Kerr Reservoir, Clarksville, VA
17. Chesapeake Bay, Hampton, VA
18. Atlantic Ocean, Virginia Beach, VA, Safety Zone. B
19. Atlantic Ocean, Virginia Beach, VA, Safety Zone. C
20. Nansemond River, Suffolk, VA
21. James River, Williamsburg, VA
22. Edenton Bay, Edenton, NC
23. Motts Channel, Banks Channel, Wrightsville Beach, NC
24. New River, Jacksonville, NC

This rule modifies five previously established safety zones at the following locations: Potomac River, Charles County, MD; Northwest Harbor (West Channel) Patapsco River, MD; Delaware River, Essington, PA; Atlantic Ocean, Virginia Beach, VA, safety zone A; and Cape Fear River, Wilmington, NC.

The Coast Guard typically receives numerous applications in these areas for fireworks displays. Previously a temporary safety zone was usually established on an emergency basis for each display. This limited the opportunity for public comment. Establishing permanent safety zones through notice and comment rulemaking provides the public the opportunity to comment on the zone locations, size and length of time the zones will be enforced.

Each year organizations within the Fifth Coast Guard District sponsor

fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene may allow persons within the safety zone if conditions permit.

The Coast Guard will publish notices in the **Federal Register** if an event sponsor reports a change to the listed event venue or date. In the case of inclement weather the event usually will be conducted on the day following the date listed in the Table to § 165.506. Coast Guard Captains of the Port will give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, 24 to 48 hours before the event is scheduled to begin, to notify the public. The public will also be notified about many of the listed marine events by local newspapers, radio and television stations. The various methods of notification provided by the Coast Guard and local community media outlets will facilitate informing mariners so they can adjust their plans accordingly.

Fireworks barges or launch sites on land used in the locations stated in this rulemaking shall display a sign. The sign will be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water labeled "FIREWORKS—DANGER—STAY AWAY". This will provide on scene notice that the safety zone is, or will, be enforced on that day. This notice will consist of a diamond shaped sign, 4 foot by 4 foot, with a 3-inch orange retro-reflective border. The word "DANGER" shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 30 minutes after its completion to enforce the safety zone.

The enforcement period for these safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter,

remain in, or transit through these safety zones during this timeframe if authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23.

This rule is necessary to protect the safety of life and property on navigable waters during these fireworks events and provides the marine community information on safety zone locations, size, and length of time the zones will be active.

#### Discussion of Comments and Changes

The Coast Guard received two comments in response to the NPRM which were addressed in the SNPRM published in the **Federal Register**. The first comment, from the North Carolina Department of Environment and Natural Resources, Division of Coastal Management letter of December 2, 2008 addressed a revision to the Cape Fear River safety zone. Specifically, the New Hanover County, NC Fire Rescue expressed concern that the safety zone, as proposed for Cape Fear River, did not meet the county's fire code. The Coast Guard submitted a revised fireworks safety zone for the Cape Fear River location that was subsequently approved by New Hanover County and Fire Rescue. This change is included in this rule.

The second comment was submitted by the Virginia Department of Environmental Quality, Federal Consistency Coordinator. They suggested that the Atlantic Ocean, Virginia Beach Safety zone be relocated northward of the 14th street Fishing Pier into the vicinity of 17th street. The change was made in this final rule.

Lastly, the Coast Guard revised the safety zone for (b.)24, Anacostia River, Washington, DC. The safety zone was moved approximately 500 yards southeast of the shoreline near Washington Nationals Ball Park to accommodate a barge launch platform. This change was made in the interest of enhancing safety by increasing the pyrotechnic fallout area over the Anacostia River.

The Coast Guard is establishing 73 safety zones on the specified waters listed within the Table to § 165.506.

#### 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 rule to be so minimal that a full Regulatory Evaluation is unnecessary. This finding is based on the short amount of time that vessels would be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the safety zones. Advance notifications would also be made to the local maritime community by issuing Local Notice to Mariners, Marine information and facsimile broadcasts so mariners may adjust their plans accordingly. Notifications to the public for most events will usually be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these safety zones will only be enforced two to three times per 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 the established safety zones during the times these zones are enforced.

This rule will impact mariners desiring to transit the area identified as a safety zone during the times identified within this final rule. The safety zones identified in this final rule will not have a significant economic impact on a substantial number of small entities for the following reasons: The enforcement period will be short in duration, and in many of the zones vessels will be able to transit safely around the safety zones.

Further, those seeking permission to enter the zone may contact the appropriate Captain of the Port or designated Coast Guard patrol personnel on scene to gain entry into the zone. Lastly, before the enforcement period, we will issue maritime advisories widely so as to allow mariners to plan accordingly.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM and in the SNPRM 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.

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 0023.1 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, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would establish 73 safety zones.

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, 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. 1226, 1231; 46 U.S.C. 3306, 3703 and Chapter 701; 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. Revise § 165.506 to read as follows:

#### § 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

(a) *Regulations.* The following regulations apply to the fireworks safety zones listed in the Table to § 165.506.

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) These regulations will be enforced annually, for the duration of each fireworks event listed in the Table to § 165.506. In the case of inclement weather the event may be conducted on the day following the date listed in the Table to § 165.506. Annual notice of the exact dates and times of the enforcement period of the regulation with respect to each safety zone, the geographical area, and other details concerning the nature of the fireworks event will be published in Local Notices to Mariners and transmitted via Broadcast Notice to Mariners over VHF–FM marine band radio.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. Those personnel are comprised of commissioned, warrant, and petty officers of the U.S. Coast Guard. Other Federal, State and local agencies may assist these personnel in the enforcement of the safety zone. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(b) *Notification.* (1) Fireworks barges and launch sites on land that operate within the regulated areas contained in the Table to § 165.506 will have a sign affixed to the port and starboard side of the barge, or mounted on a post 3 feet above ground level when on land immediately adjacent to the shoreline and facing the water labeled “FIREWORKS—DANGER—STAY AWAY”. This will provide on scene notice that the safety zone will be enforced on that day. This notice will consist of a diamond shaped sign 4 feet by 4 feet with a 3-inch orange retro reflective border. The word “DANGER” shall be 10-inch black block letters centered on the sign with the words “FIREWORKS” and “STAY AWAY” in 6-inch black block letters placed above and below the word “DANGER” respectively on a white background.

(2) Coast Guard Captains of the Port in the Fifth Coast Guard District will notify the public of the enforcement of these safety zones by all appropriate means to effect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. The public may also be notified about many of the listed marine events by local newspapers, radio and television stations. The various methods of notification provided by the Coast Guard and local community media outlets will facilitate informing mariners so they can adjust their plans accordingly.

(c) *Contact Information.* Questions about safety zones and related events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see 33 CFR 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Atlantic Beach, North Carolina: (252) 247–4545.

(d) *Enforcement Period.* The safety zones in the Table to § 165.506 will be enforced from 5:30 p.m. to 1 a.m. each day a barge with a “FIREWORKS—DANGER—STAY AWAY” sign on the port and starboard side is on-scene or a “FIREWORKS—DANGER—STAY AWAY” sign is posted on land adjacent to the shoreline, in a location listed in the Table to § 165.506. Vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
<b>(a.) Coast Guard Sector Delaware Bay—COTP Zone</b>			
1 .....	July 4th .....	North Atlantic Ocean, Bethany Beach, DE, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks launch platform in approximate position latitude 38°32'08" N, longitude 075°03'15" W, adjacent to shoreline of Bethany Beach, DE.
2 .....	Labor Day .....	Indian River Bay, DE, Safety Zone.	All waters of the Indian River Bay within a 360 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36'42" N, longitude 075°08'18" W, about 700 yards east of Pots Net Point, DE.
3 .....	July 4th .....	Atlantic Ocean, Rehoboth Beach, DE, Safety Zone.	All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43'01.2" N, longitude 075°04'21" W, approximately 400 yards east of Rehoboth Beach, DE.
4 .....	July 4th .....	North Atlantic Ocean, Avalon, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°05'31" N, longitude 074°43'00" W, in the vicinity of the shoreline at Avalon, NJ.
5 .....	July 4th, September—2nd Saturday.	Barnegat Bay, Barnegat Township, NJ, Safety Zone.	The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44'50" N, longitude 074°11'21" W, approximately 500 yards north of Conklin Island, NJ.
6 .....	July 4th .....	North Atlantic Ocean, Cape May, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55'36" N, longitude 074°55'26" W, immediately adjacent to the shoreline at Cape May, NJ.
7 .....	July 3rd .....	Delaware Bay, North Cape May, NJ, Safety Zone.	All waters of the Delaware Bay within a 500 yard radius of the fireworks barge in approximate position latitude 38°58'00" N, longitude 074°58'30" W.
8 .....	August—3rd Sunday .....	Great Egg Harbor Inlet, Margate City, NJ, Safety Zone.	All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19'33" N, longitude 074°31'28" W, on the Intracoastal Waterway near Margate City, NJ.
9 .....	July 4th, August every Thursday, September 1st Thursday.	Metedeconk River, Brick Township, NJ, Safety Zone.	The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03'24" N, longitude 074°06'42" W, near the shoreline at Brick Township, NJ.
10 .....	July 4th .....	North Atlantic Ocean, Ocean City, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16'22" N, longitude 074°33'54" W, in the vicinity of the shoreline at Ocean City, NJ.
11 .....	May—4th Saturday .....	Barnegat Bay, Ocean Township, NJ, Safety Zone.	All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47'33" N, longitude 074°10'46" W.
12 .....	July 4th .....	Little Egg Harbor, Parker Island, NJ, Safety Zone.	All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34'18" N, longitude 074°14'43" W, approximately 100 yards north of Parkers Island.
13 .....	September—3rd Saturday .....	Delaware River, Chester, PA, Safety Zone.	All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yards radius of the fireworks barge located in approximate position latitude 39°49'43.2" N, longitude 075°22'42" W.
14 .....	September—3rd Saturday .....	Delaware River, Essington, PA, Safety Zone.	All the waters of the Delaware River near Essington, PA, west of Little Tincum Island within a 250 yards radius of the fireworks barge located in the approximate position latitude 39°51'18" N, longitude 075°18'57" W.
15 .....	July 4th, Columbus Day, December 31st, January 1st.	Delaware River, Philadelphia, PA, Safety Zone.	All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56'31.2" N, longitude 075°08'28.1" W; thence to latitude 39°56'29.1" N, longitude 075°07'56.5" W, and bounded on the north by the Benjamin Franklin Bridge.
<b>(b.) Coast Guard Sector Baltimore—COTP Zone</b>			
1 .....	April—1st or 2nd Saturday .....	Washington Channel, Upper Potomac River, Washington, DC, Safety Zone.	All waters of the Upper Potomac River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52'09" N, longitude 077°01'13" W, located within the Washington Channel in Washington Harbor, DC.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
2 .....	July 4th, December—1st and 2nd, Saturday, December 31st.	Severn River and Spa Creek, Annapolis, MD, Safety Zone.	All waters of the Severn River and Spa Creek within an area bounded by a line drawn from latitude 38°58'39.6" N, longitude 076°28'49" W; thence to latitude 38°58'41" N, longitude 076°28'14" W; thence to latitude 38°59'01" N, longitude 076°28'37" W; thence to latitude 38°58'57" N, longitude 076°28'40" W, located near the entrance to Spa Creek in Annapolis, Maryland.
3 .....	Saturday before Independence Day holiday.	Middle River, Baltimore County, MD, Safety Zone.	All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17'45" N, longitude 076°23'49" W, approximately 300 yards east of Rockaway Beach, near Turkey Point.
4 .....	July 4th, December 31st .....	Patapsco River (Middle Branch), Baltimore, MD, Safety Zone.	All waters of the Patapsco River, Middle Branch, within an area bound by a line drawn from the following points: latitude 39°15'22" N, longitude 076°36'36" W; thence to latitude 39°15'10" N, longitude 076°36'00" W; thence to latitude 39°15'40" N, longitude 076°35'23" W; thence to latitude 39°15'49" N, longitude 076°35'47" W; thence to the point of origin, located approximately 600 yards east of Hanover Street (SR-2) Bridge.
5 .....	June 14th, July 4th, September—2nd Saturday, December 31st.	Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15'55" N, 076°34'35" W, located adjacent to the East Channel of Northwest Harbor.
6 .....	May—3rd Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 150 yard radius of the fireworks barge in approximate position latitude 39°16'55" N, longitude 076°36'17" W, located at the entrance to Baltimore Inner Harbor, approximately 150 yards southwest of pier 6.
7 .....	May—3rd Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17'03" N, longitude 076°36'36" W, located in Baltimore Inner Harbor, approximately 150 yards southeast of pier 1.
8 .....	July 4th, December 31st .....	Northwest Harbor (West Channel) Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16'21" N, longitude 076°34'38" W, located adjacent to the West Channel of Northwest Harbor.
9 .....	July 4th .....	Patuxent River, Calvert County, MD, Safety Zone.	All waters of the Patuxent River within a 280 yard radius of the fireworks barge in approximate position latitude 38°19'06.6" N, longitude 076°26'10.1" W, approximately 1450 yards west of Drum Point, MD.
10 .....	July 4th .....	Patuxent River, Solomons Island, Calvert County, MD, Safety Zone.	All waters of the Patuxent River within a 400 yard radius of the fireworks barge located at latitude 38°19'03" N, longitude 076°26'07.6" W.
11 .....	July 4th .....	Patuxent River, Solomons Island, MD, Safety Zone.	All waters of Patuxent River within a 300 yard radius of the fireworks barge in an area bound by the following points: latitude 38°19'42" N, longitude 076°28'02" W; thence to latitude 38°19'26" N, longitude 076°28'18" W; thence to latitude 38°18'48" N, longitude 076°27'42" W; thence to latitude 38°19'06" N, longitude 076°27'25" W; thence to the point of origin, located near Solomons Island, MD.
12 .....	July 4th .....	Chester River, Kent Island Narrows, MD, Safety Zone.	All waters of the Chester River, within an area bound by a line drawn from the following points: latitude 38°58'50" N, longitude 076°15'00" W; thence north to latitude 38°59'00" N, longitude 076°15'00" W; thence east to latitude 38°59'00" N, longitude 076°14'46" W; thence southeast to latitude 38°58'50" N, longitude 076°14'28" W; thence southwest to latitude 38°58'37" N, longitude 076°14'36" W, thence northwest to latitude 38°58'42" N, longitude 076°14'55" W, thence to the point of origin, located approximately 900 yards north of Kent Island Narrows (US-50/301) Bridge.
13 .....	July 3rd .....	Chesapeake Bay, Chesapeake Beach, MD, Safety Zone.	All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position latitude 38°41'33" N, longitude 076°31'48" W, located near Chesapeake Beach, Maryland.
14 .....	July 4th .....	Choptank River, Cambridge, MD, Safety Zone.	All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35'06" N, longitude 076°04'46" W.
15 .....	July—2nd and last Saturday .....	Potomac River, Charles County, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°20'18" N, longitude 077°15'00" W, approximately 700 yards north of the shoreline at Fairview Beach, Virginia.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
16 .....	May—last Saturday, July 4th ....	Potomac River, Charles County, MD—Mount Vernon, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks launch site near the Mount Vernon Estate, in Fairfax County, Virginia, located at latitude 38°42'24" N, longitude 077°04'56" W.
17 .....	October—1st Saturday .....	Dukeharts Channel, Potomac River, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13'48" N, longitude 076°44'37" W, located adjacent to Dukeharts Channel near Coltons Point, Maryland.
18 .....	July—Day before Independence Day holiday, November—last Friday.	Potomac River, National Harbor, MD, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47'18" N, longitude 077°01'01" W; thence to latitude 38°47'11" N, longitude 077°01'26" W; thence to latitude 38°47'25" N, longitude 077°01'33" W; thence to latitude 38°47'32" N, longitude 077°01'08" W; thence to the point of origin, located at National Harbor, Maryland.
19 .....	July 4th, September—last Saturday.	Susquehanna River, Havre de Grace, MD, Safety Zone.	All waters of the Susquehanna River within a 150 yard radius of the fireworks barge in approximate position latitude 39°32'42" N, longitude 076°04'30" W, approximately 800 yards east of the waterfront at Havre de Grace, MD.
20 .....	June and July—Saturday before Independence Day holiday.	Miles River, St. Michaels, MD, Safety Zone.	All waters of the Miles River within a 200 yard radius of the fireworks barge in approximate position latitude 38°47'42" N, longitude 076°12'23" W, located near the waterfront of St. Michaels, Maryland.
21 .....	June and July—Saturday or Sunday before Independence Day holiday.	Tred Avon River, Oxford, MD, Safety Zone.	All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41'48" N, longitude 076°10'38" W, approximately 500 yards northwest of the waterfront at Oxford, MD.
22 .....	July 3rd .....	Northeast River, North East, MD, Safety Zone.	All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35'26" N, longitude 075°57'00" W, approximately 400 yards south of North East Community Park.
23 .....	June—2nd or 3rd Saturday, July—1st or 2nd Saturday, September—1st or 2nd Saturday.	Upper Potomac River, Alexandria, VA, Safety Zone.	All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°48'37" N, longitude 077°02'02" W, located near the waterfront of Alexandria, Virginia.
24 .....	March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park.	Anacostia River, Washington, DC, Safety Zone.	All waters of the Anacostia River, within a 350 yard radius of the fireworks barge in approximate position latitude 38°52'16" N, longitude 077°00'13" W, approximately 500 yards southeast of the shoreline near Washington Nationals Ball Park.
25 .....	June—last Saturday .....	Potomac River, Prince William County, VA, Safety Zone.	All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34'08" N, longitude 077°15'34" W, located near Cherry Hill, Virginia.

**(c.) Coast Guard Sector Hampton Roads—COTP Zone**

1 .....	July 4th .....	Atlantic Ocean, Ocean City, MD, Safety Zone.	All waters of the Atlantic Ocean in an area bound by the following points: latitude 38°19'39.9" N, longitude 075°05'03.2" W; thence to latitude 38°19'36.7" N, longitude 075°04'53.5" W; thence to latitude 38°19'45.6" N, longitude 075°04'49.3" W; thence to latitude 38°19'49.1" N, longitude 075°05'00.5" W; thence to point of origin. The size of the proposed zone extends approximately 300 yards offshore from the fireworks launch area located at the High Water mark on the beach.
2 .....	May—4th Sunday, June—3rd Monday, June 29th and July 4th, August—1st and 4th Sunday, August 6th, September—1st and 4th Sunday.	Isle of Wight Bay, Ocean City, MD, Safety Zone.	All waters of Isle of Wight Bay within a 350 yard radius of the fireworks barge in approximate position latitude 38°22'32" N, longitude 075°04'30" W.
3 .....	July 4th .....	Assawoman Bay, Fenwick Island—Ocean City, MD, Safety Zone.	All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25'57.6" N, longitude 075°03'55.8" W.
4 .....	July 4th .....	Broad Bay, Virginia Beach, VA, Safety Zone.	All waters of the Broad Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52'08" N, longitude 076°00'46" W, located on the shoreline near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia.
5 .....	October—1st Friday .....	York River, West Point, VA, Safety Zone.	All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31'25" N, longitude 076°47'19" W.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
6 .....	July 4th .....	York River, Yorktown, VA, Safety Zone.	All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14'14" N, longitude 076°30'02" W, located near Yorktown, Virginia.
7 .....	July 4th .....	Chincoteague Channel, Chincoteague, VA, Safety Zone.	All waters of the Chincoteague Channel within a 360 yard radius of the fireworks launch location at the Chincoteague carnival waterfront in approximate position latitude 37°55'40.3" N, longitude 075°23'10.7" W, approximately 900 yards southwest of Chincoteague Swing Bridge.
8 .....	May—1st Friday, July 4th .....	James River, Newport News, VA, Safety Zone.	All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58'30" N, longitude 076°26'19" W, located in the vicinity of the Newport News Shipyard, Newport News, Virginia.
9 .....	July 9th .....	Chesapeake Bay, Hampton, VA, Safety Zone.	All waters of the Chesapeake Bay within a 350 yard radius of approximate position latitude 37°02'23" N, longitude 076°17'22" W, located near Buckroe Beach.
10 .....	June—4th Friday .....	Chesapeake Bay, Norfolk, VA, Safety Zone.	All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57'21" N, longitude 076°15'00" W, located near Ocean View Fishing Pier.
11 .....	July 4th .....	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55'02" N, longitude 076°03'27" W, located at the First Landing State Park at Virginia Beach, Virginia.
12 .....	Memorial Day, June—1st and 2nd Friday, Saturday and Sunday, July 4th, November—4th Saturday, December—1st Saturday and December 31st, January—1st.	Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone.	All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50'54.8" N, longitude 076°18'10.7" W; thence to latitude 36°51'7.9" N, longitude 076°18'01" W; thence to latitude 36°50'45.6" N, longitude 076°17'44.2" W; thence to latitude 36°50'29.6" N, longitude 076°17'23.2" W; thence to latitude 36°50'7.7" N, longitude 076°17'32.3" W; thence to latitude 36°49'58" N, longitude 076°17'28.6" W; thence to latitude 36°49'52.6" N, longitude 076°17'43.8" W; thence to latitude 36°50'27.2" N, longitude 076°17'45.3" W thence to the point of origin.
13 .....	May—2nd Saturday, September—1st Saturday and Sunday, December—1st Saturday.	Appomattox River, Hopewell, VA, Safety Zone.	All waters of the Appomattox River within a 400 yard radius of the fireworks barge in approximate position latitude 37°19'11" N, longitude 077°16'55" W.
14 .....	July—3rd Saturday .....	John H. Kerr Reservoir, Clarksville, VA, Safety Zone.	All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37'51" N, longitude 078°32'50" W, located near the south end of the State Route 15 Highway Bridge.
15 .....	May, June, July, August, September, October—every Wednesday, Friday, Saturday and Sunday, July 4th.	Atlantic Ocean, Virginia Beach, VA, Safety Zone. A.	All waters of the Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51'12" N, longitude 075°58'06" W, located off the beach between 17th and 31st streets.
16 .....	September—4th Saturday .....	Atlantic Ocean, VA Beach, VA, Safety Zone. B.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50'35" N, longitude 075°58'09" W, located on the 14th Street Fishing Pier.
17 .....	August—4th Friday and Saturday.	Atlantic Ocean, VA Beach, VA, Safety Zone. C.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49'55" N, longitude 075°58'00" W, located off the beach between 2nd and 6th streets.
18 .....	July 4th .....	Nansemond River, Suffolk, VA, Safety Zone.	All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44'27" N, longitude 076°34'42" W, located near Constant's Wharf in Suffolk, VA.
19 .....	February—4th Saturday, July 4th.	Chickahominy River, Williamsburg, VA, Safety Zone.	All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14'50" N, longitude 076°52'17" W, near Barrets Point, Virginia.
20 .....	July 4th .....	James River, Williamsburg, VA, Safety Zone.	All waters of the James River within a 350 yard radius of approximate position latitude 37°13'23.3" N, longitude 076°40'11.8" W, located near Kingsmill Resort.

**(d.) Coast Guard Sector North Carolina—COTP Zone**

1 .....	July 4th, October—1st Friday ...	Morehead City Harbor Channel, NC, Safety Zone.	All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43'01" N, longitude 076°42'59.6" W, a position located at the west end of Sugar Loaf Island, NC.
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TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
2 .....	April—2nd Saturday, July 4th, August—3rd Monday, October—1st Friday.	Cape Fear River, Wilmington, NC, Safety Zone.	All waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13'54" N, longitude 077°57'06" W; thence northeast to latitude 34°13'57" N, longitude 077°57'05" W; thence north to latitude 34°14'11" N, longitude 077°57'07" W; thence northwest to latitude 34°14'22" N, longitude 077°57'19" W; thence west to latitude 34°14'22" N, longitude 077°57'06" W; thence southeast to latitude 34°14'07" N, longitude 077°57'00" W; thence south to latitude 34°13'54" N, longitude 077°56'58" W; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge.
3 .....	July 4th .....	Green Creek and Smith Creek, Oriental, NC, Safety Zone.	All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01'29.6" N, longitude 076°42'10.4" W, located near the entrance to the Neuse River in the vicinity of Oriental, NC.
4 .....	July 4th .....	Pasquotank River, Elizabeth City, NC, Safety Zone.	All waters of the Pasquotank River within a 300 yard radius of the fireworks launch site in approximate position latitude 36°18'00" N, longitude 076°13'00" W, approximately 200 yards south of the east end of the Elizabeth City Bascule Bridges.
5 .....	July 4th .....	Currituck Sound, Corolla, NC, Safety Zone.	All waters of the Currituck Sound within a 300 yard radius of the fireworks barge in approximate position latitude 36°22'48" N, longitude 075°51'15" W.
6 .....	July 4th, November—3rd Saturday.	Middle Sound, Figure Eight Island, NC, Safety Zone.	All waters of the Figure Eight Island Causeway Channel from latitude 34°16'32" N, longitude 077°45'32" W, thence east along the marsh to a position located at latitude 34°16'19" N, longitude 077°44'55" W, thence south to the causeway at position latitude 34°16'16" N, longitude 077°44'58" W, thence west along the shoreline to position latitude 34°16'29" N, longitude 077°45'34" W, thence back to the point of origin.
7 .....	June—2nd Saturday, July—1st Saturday after July 4th.	Pamlico River, Washington, NC, Safety Zone.	All waters of the Pamlico River that fall within a 300 yard radius of the fireworks launch site at latitude 35°32'19" N, longitude 077°03'20.5" W, located 500 yards north of Washington railroad trestle bridge.
8 .....	July 4th .....	Neuse River, New Bern, NC, Safety Zone.	All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06'07.1" N, longitude 077°01'35.8" W, located 420 yards north of the New Bern, Twin Span, high rise bridge.
9 .....	July 4th .....	Edenton Bay, Edenton, NC, Safety Zone.	All waters within a 300 yard radius of position latitude 36°03'04" N, longitude 076°36'18" W, approximately 150 yards east of the entrance to Queen Anne Creek, Edenton, NC.
10 .....	July 4th, November—4th Monday.	Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone.	All waters of Motts Channel within a 300 yard radius of the fireworks barge in approximate position latitude 34°12'29" N, longitude 077°48'27" W, approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC.
11 .....	July 4th .....	Cape Fear River, Southport, NC, Safety Zone.	All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54'40" N, longitude 078°01'18" W, approximately 700 yards south of the waterfront at Southport, NC.
12 .....	July 4th .....	Big Foot Slough, Ocracoke, NC, Safety Zone.	All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06'54" N, longitude 075°59'24" W, approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC.
13 .....	August—1st Tuesday .....	New River, Jacksonville, NC, Safety Zone.	All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44'45" N, longitude 077°26'18" W, approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina.

Dated: February 19, 2009.

**Fred M. Rosa, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.*

[FR Doc. E9-7885 Filed 4-7-09; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0752]

RIN 1625-AA87

#### Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard has established a security zone encompassing the navigable waters of the West Basin, Port Canaveral Harbor, Cape Canaveral, Florida. This security zone will be activated 4 hours prior to the scheduled arrival of a cruise ship at the West Basin. It is only enforceable during Maritime Security (MARSEC) Levels 2 and 3 or when there is a specific credible threat during MARSEC Level 1. This security zone will remain activated until the departure of all cruise ships from the West Basin.

**DATES:** This rule is effective May 8, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0752 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-0752 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: 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 and the Coast Guard Sector Jacksonville Prevention Department, 4200 Ocean Street, Atlantic Beach, Florida 32233, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Lieutenant Commander Mark Gibbs at

Coast Guard Sector Jacksonville Prevention Department, Florida. Contact telephone is (904) 564-7563. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On October 20, 2008, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, Florida in the *Federal Register* (73 FR 62235). We received three letters commenting on the rule. No public meeting was requested, and none was held.

##### Background and Purpose

The September 11, 2001, terrorist attacks on the World Trade Center complex in New York and the Pentagon in Arlington, Virginia, proved the devastating effects of subversive activity on U.S. critical infrastructure. Since that time, the Coast Guard has been taking action to ensure the security of maritime critical infrastructure and key resources throughout the country.

Subversive activity towards cruise ships and their associated passengers and crew is of paramount concern to the Coast Guard. Therefore, in order to strengthen security and further control access to the West Basin, the Captain of the Port Jacksonville has decided, after consultation with the Northeast and Eastern Central Florida Area Maritime Security Committee and in cooperation with the Canaveral Port Authority, to implement a security zone encompassing the West Basin. This security zone is only enforceable during MARSEC Levels 2 and 3 or when there is a specified credible threat during MARSEC Level 1.

As reflected in 33 CFR 101.105, MARSEC level means the level set to reflect the prevailing threat environment to the marine elements of the national transportation system, including ports, vessels, facilities, and critical assets and infrastructure located on or adjacent to waters subject to the jurisdiction of the U.S. The higher the level number, the greater the threat:

*MARSEC Level 1* means the level for which minimum appropriate protective security measures shall be maintained at all times.

*MARSEC Level 2* means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a transportation security incident.

*MARSEC Level 3* means the level for which further specific protective security measures shall be maintained for a limited period of

time when a transportation security incident is probable or imminent, although it may not be possible to identify the specific target.

As specified in 33 CFR 101.300, the Captain of the Port will communicate any changes in the MARSEC levels through a local Broadcast Notice to Mariners, an electronic means, if available, or as detailed in the Area Maritime Security Plan developed under 46 U.S.C. 70103(b).

##### Discussion of Comments and Changes

The Coast Guard received three comments in response to the NPRM. One comment was received from a private citizen; one comment was received from the Navigation Safety Advisory Council (NAVSAC); and one comment was received from the Florida Fish and Wildlife Conservation Commission (FWC).

The private citizen's comment addressed his displeasure of a security zone being used to protect cruise ships in the West Basin of Port Canaveral Harbor. The commenter felt that cruise ships should build private ports and not be permitted to dock in public waterways.

The Coast Guard took the individual's comments into consideration; however the need to protect cruise ships and their passengers and crew is of paramount concern to the Coast Guard. The Coast Guard feels the best way to address this concern is to establish this security zone. Since this zone will only be active during MARSEC 2 and 3 or when there is a specific credible threat during MARSEC 1, the Coast Guard has determined there will be minimal impact on all waterways users.

The comments from the NAVSAC and FWC addressed concerns pertaining to the rule's notification to the public when the security zone is activated. They are of the opinion that a red flag on a 50-foot pole located at the east end of Cruise Ship terminal 10 would not be an appropriate means of notifying the public. The NAVSAC and FWC are concerned that the red flag could be mistaken as the "divers down" flag or the "bravo" flag. They are also of the opinion that law enforcement officers will be reluctant to enforce the regulation against vessel operators who claim not to have understood the meaning of the red flag. They believe the use of a red flag will make it more difficult to prosecute violators of the security zone because it will be harder to prove the element of knowledge. They feel prosecutors will be less likely to accept these cases and judges will be more likely to dismiss the charges. The NAVSAC and FWC recommend that a regulatory mark be placed at the