

**Material Incorporated by Reference**

(i) You must use 328 Support Services Service Bulletin SB-328-27-483, dated December 30, 2008, including Compliance Report; or 328 Support Services Service Bulletin SB-328J-27-233, dated December 30, 2008, including Compliance Report; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. (Only the odd-numbered pages of these documents contain the issue date of the documents.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D-82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail [gsc.op@328support.de](mailto:gsc.op@328support.de); Internet <http://www.328support.de>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on April 29, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-10655 Filed 5-7-09; 8:45 am]

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**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199**

[Docket ID: DOD-2007-HA-0048]

**TRICARE; Hospital Outpatient Prospective Payment System (OPPS): Statement Concerning Additional Public Comments Following Final Rule Issuance**

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Response to comments.

**SUMMARY:** This document is to inform the public of DoD's views regarding the additional public comments that were invited by the document published February 6, 2009 (74 FR 6228), on the final rule issued December 10, 2008 (73 FR 74945). DoD is making no changes to the final rule as implementation of the

Temporary Military Contingency Payment Adjustment (TMCPA) included in the final rule will accommodate the major concerns expressed in the additional public comments.

**DATES:** *Effective Date:* The effective date of the final rule issued December 10, 2008, is unchanged; it continues to be May 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

David Bennett or Martha M. Maxey, TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch; *telephone:* (303) 676-3494 or (303) 676-3627.

**SUPPLEMENTARY INFORMATION:**

DoD received approximately 300 public comments during the additional comment period, mostly following a similar pattern from or on behalf of hospitals. In the additional public comments received, there were three predominant themes: (1) That for some hospitals, particularly some close to military installations, TRICARE OPPS would have a significant financial impact; (2) DoD should follow the Medicare precedent in making first-year OPPS implementation cost neutral; and (3) DoD should follow the TRICARE CHAMPUS Maximum Allowable Charge physician payment system reform precedent and limit reductions to no more than 15 percent per year during the transition period.

DoD is not making any changes to the final rule. Implementation of the TMCPAs under the final rule will accommodate the concerns expressed by hospitals. TMA has provided instructions to TRICARE Regional Offices on TMCPAs and included additional guidance in the TRICARE Reimbursement Manual, Chapter 13, Section 3, paragraph III.D.5.g. at <http://manuals.tricare.osd.mil>. A Transitional Adjustment Information Paper is also available on TMA's OPPS Web site at <http://www.tricare.mil/opps/>.

Dated: May 5, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9-10708 Filed 5-7-09; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 100**

[Docket No. USCG-2009-0107]

**RIN 1625-AA08**

**Special Local Regulations for Marine Events; Patuxent River, Patuxent River, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for "U.S. Naval Air Station Patuxent River Air Expo 2009", an aerial demonstration to be held over the waters of the Patuxent River adjacent to Patuxent River, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in portions of the Patuxent River during the aerial demonstration.

**DATES:** This rule is effective from May 21 through May 24, 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-2009-0107 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-2009-0107 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 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 Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, at 757-398-6204 or e-mail at [Dennis.M.Sens@uscg.mil](mailto:Dennis.M.Sens@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**

On March 24, 2009, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Patuxent River, Patuxent

River, MD in the **Federal Register** (74 FR 12287). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The potential dangers posed by high performance aircraft operating in close proximity to adjacent waterways and to ensure compliance with FAA rules make special local regulations necessary. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. However, the Coast Guard will provide advance notifications to users of the effected waterways via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

#### **Background and Purpose**

On May 23, 2009 and May 24, 2009, U.S. Naval Air Station Patuxent River, Maryland will sponsor the "U.S. Naval Air Station Patuxent River Air Expo 2009". The public event will consist of military and civilian aircraft performing low-flying, high speed precision maneuvers and aerial stunts over both the airfield at Naval Air Station Patuxent River and the waters of the Patuxent River. Federal Aviation Administration restrictions require that portions of the Blue Angels and aerobatic performance boxes take place over the waters of the Patuxent River. In addition to the air show dates, on May 21, 2009 and May 22, 2009, military and civilian aircraft performing in the air show will conduct practice and demonstration maneuvers and stunts over both the airfield at Naval Air Station Patuxent River and specified waters of the Patuxent River. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the vicinity of the air shows, practices and demonstrations, and during other scheduled activities related to the air show.

#### **Discussion of Comments and Changes**

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Patuxent River, MD.

#### **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 rule prevents vessel traffic from transiting a portion of the Patuxent River during the Air Show event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

##### **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 would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this segment of the Patuxent River during the event. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the air show. In some cases, vessels may be able to safely transit around or through the regulated area at various times with the permission of the Coast Guard Patrol Commander. Before the enforcement period, the Coast Guard will issue maritime advisories so

mariners can adjust their plans 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 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 the category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under section 2.B.2, Figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States. Such events have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water events and activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–0107 to read as follows:

#### § 100.35–T05–0107 Special Local Regulations for Marine Events; Patuxent River, Patuxent River, MD.

(a) *Regulated area.* The following locations are regulated areas:

(1) All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at

Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N, longitude 076°25′47″ W; thence to latitude 38°17′47″ N, longitude 076°26′00″ W; thence to latitude 38°18′09″ N, longitude 076°25′40″ W; thence to latitude 38°18′00″ N, longitude 076°25′25″ W, located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland.

(2) All waters of the lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, within an area bounded by a line drawn from a position at latitude 38°18′41″ N, longitude 076°23′43″ W; to latitude 38°18′16″ N, longitude 076°22′35″ W; thence to latitude 38°18′12″ N, longitude 076°22′37″ W; thence to latitude 38°18′36″ N, longitude 076°23′46″ W, located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions*—(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer of the U.S. Coast Guard on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) *Enforcement period.* This section will be enforced as follows:

(1) During the air show practice from 9 a.m. to 5 p.m. on May 21, 2009.

(2) Air show practice and modified show from 9 a.m. to 5 p.m. on May 22, 2009.

(3) “Meet the Performers Party” (at Cedar Point Officers’ Club) performance from 6 p.m. to 9 p.m. on May 22, 2009.

(4) Air show performances from 9 a.m. to 5 p.m. on May 23 and 24, 2009.

Dated: April 27, 2009.

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

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

[FR Doc. E9-10751 Filed 5-7-09; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0288]

#### Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Navy Pier East Safety Zone in Chicago Harbor from 9 p.m. until 9:40 p.m. on May 22, 2009. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. All vessels must obtain permission from the Captain of the Port or his on-scene representative to enter, move within or exit the safety zone.

**DATES:** The regulations in § 165.933 will be enforced from 9 p.m. on May 22, 2009 to 9:40 p.m. on May 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail LCDR Kimber Bannan, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7154, e-mail [Kimber.L.Bannon@uscg.mil](mailto:Kimber.L.Bannon@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone, Navy Pier East, Chicago Harbor, Chicago, IL, found in 33 CFR 165.933 (published on June 13, 2007 at 72 FR 32525) on May 22, 2009 from 9 p.m. through 9:40 p.m., for the Municipal Clerks of Illinois Fireworks.

The general regulations in 33 CFR 165.23 apply. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

This notice is issued under authority of 33 CFR 165.933 Safety Zone, Navy Pier East, Chicago Harbor, Chicago, IL, and 5 U.S.C. 552(a). In addition to this notice in the Federal Register, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners.

The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF-FM.

Dated: April 23, 2009.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E9-10756 Filed 5-7-09; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R04-OAR-2009-0043; FRL-8901-8]

#### Finding of Failure To Submit State Implementation Plans Required for the 1997 8-Hour Ozone National Ambient Air Quality Standard; North Carolina and South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking a final action finding that North Carolina and South Carolina have failed to submit state implementation plan (SIP) revisions to satisfy certain requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The submissions at issue were due because the Charlotte bi-state area (Charlotte Area), which includes areas in both North and South Carolina, is a moderate nonattainment area for the 1997 8-hour ozone standard. Under the CAA and EPA's implementing regulations, states with nonattainment areas classified as moderate, serious, severe or extreme were required to submit by June 15, 2007, SIPs: demonstrating how each nonattainment area would attain the 1997 8-hour ozone standard as expeditiously as practicable but no later than the applicable dates

established in the implementing regulations and demonstrating reasonable further progress (RFP). Additionally, states were required by September 15, 2006, to submit for these same areas, SIPs demonstrating that sources specified under the CAA were subject to reasonably available control technology requirements (RACT). North Carolina and South Carolina made these required submissions but later withdrew the attainment demonstration submissions for the Charlotte Area. As a result, EPA is making a finding of failure to submit for both North Carolina and South Carolina of the attainment demonstrations for the Charlotte Area.

**DATES:** *Effective Date:* This action is effective on May 8, 2009.

**FOR FURTHER INFORMATION CONTACT:**

General questions concerning this notice should be addressed to Mr. Richard A. Schutt, U.S. EPA Region 4; e-mail: [Schutt.dick@epa.gov](mailto:Schutt.dick@epa.gov); telephone (404) 562-9033.

**SUPPLEMENTARY INFORMATION:**

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#### I. Background

The CAA requires states with areas that are designated nonattainment for the 1997 8-hour ozone NAAQS to develop a SIP providing how such areas will attain and maintain the NAAQS. Part D of title I of the CAA specifies the required elements of a SIP for an area designated nonattainment. These requirements include, but are not limited to, RFP, RACT, and an attainment demonstration. See CAA sections 172 and 182. On March 24, 2008, EPA published a final rule in the **Federal Register** announcing that EPA had found that 11 states failed to make required SIP submissions for 11 nonattainment areas and 3 states or portions of states in the Ozone Transport Region. 73 FR 15416. At that time, EPA was in receipt of the required submissions from North Carolina and South Carolina for RFP, RACT and an attainment demonstration. However, both North Carolina and South Carolina have since withdrawn their attainment demonstration submittals, thus resulting in their failure to submit a required SIP.

EPA received the required submittals from North Carolina on June 15, 2007, and South Carolina on August 31, 2007. EPA reviewed the submittals, as well as air quality data from the ozone season in 2007 and, more recently, preliminary