



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0701]

RIN 1625-AA00

Safety Zone, James River; Newport News, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the James River, in the vicinity of the James River Reserve Fleet, in support of United States Navy explosives training on the M/V SS DEL MONTE. This safety zone will restrict vessel movement in the specified area during the explosives training. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the United States Navy explosives training.

DATES: This rule is effective and enforced from 8 a.m. on August 17, 2015 until 4 p.m. on August 21, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2015-0701]. To view documents mentioned in this

preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 rule, call or e-mail LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668-5580, e-mail HamptonRoadsWaterway@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and 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 written 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 due to the fact that this military training is necessary to train and qualify Navy personnel in the use of explosives. This training is imperative to ensure that Navy personnel located within the Fifth Coast Guard District are properly trained and qualified before conducting military and national security operations for use in securing ports and waterways. Navy policy requires that Navy personnel meet and maintain certain qualification standards before being allowed to carry out certain missions. Failure to conduct this required training at this time will result in a lapse in personnel qualification standards and, consequently, the inability of Navy personnel to carry out important national security functions at any time. The Coast Guard received the information about this event on July 20, 2015; delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objectives as well as to the public interest because immediate action is needed to protect persons and vessels against the hazards associated. The Coast Guard will provide advance notification to users of the affected waterway

via marine information broadcasts and local notice to mariners. The Coast Guard will provide advance notifications to users of the affected waterway via marine information broadcasts and local notice to mariners.

Under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the need for immediate action, the restriction on vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 33 CFR 1.05-1, 6.04-1, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The purpose of this safety zone is to protect the participants, patrol vessels, and other vessels transiting navigable waters of the James River, in the vicinity of the James River Reserve Fleet, from hazards associated with military explosives operations. The potential hazards to mariners within

the safety zone include shock waves, flying shrapnel, and loud noises.

C. Discussion of the Final Rule

The Captain of the Port of Hampton Roads is establishing a safety zone on specified waters of the James River, in the vicinity of the James River Reserve Fleet, in Newport News, VA. The safety zone will encompass all navigable waters within a 1500 foot radius of the SS DEL MONTE location at position 37°06'11"N, 076°38'40"W (NAD 1983). This safety zone will be established and enforced from 8 a.m. on August 17, 2015 until 4 p.m. on August 21, 2015. Access to the safety zone will be restricted during the specified dates and times. Except for participants and vessels authorized by the Captain of the Port of his Representative, no person or vessel may enter or remain in the regulated area.

The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice to the affected segments of the public. This includes publication in the Local Notice to Mariners and Marine Information Broadcasts.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this safety zone restricts vessel traffic through the regulated area, the effect of this rule will not be significant because: (i) this rule will only be enforced for the limited size and duration of the event; and (ii) the Coast Guard will make extensive notification to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 affects the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in waters of the Eastern Branch of the Elizabeth River during the enforcement period.

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 is of limited size and duration, and (ii) Sector Hampton Roads will issue maritime advisories widely available to users of the James River allowing mariners to adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INTFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that 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 involves

the establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34-(g) of Figure 2-1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 -REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0701 to read as follows:

§ 165.T05-0701 Safety Zone, James River; Newport News, VA.

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector Hampton Roads. Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port. Participants mean individuals and vessels involved in explosives training.

(b) Locations. The following area is a safety zone:

(1) All waters in the vicinity of the of the James River Reserve Fleet, in the James River, within a 1500 foot radius of the M/V SS DEL MONTE in approximate position 37°06'11"N, 076°38'40"W (NAD 1983).

(c) Regulations. (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels underway within this safety zone at the time it is implemented are to depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668-5555.

(5) The Coast Guard and designated James River Reserve Fleet security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels wishing to transit through the safety zone except participants and vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation; and
- (iii) Emergency response vessels.

(7) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(d) Enforcement period. This rule will be enforced from 8 a.m. on August 17, 2015 to 4 p.m. on August 21, 2015.

Dated: July 31, 2015

Christopher S. Keane
Captain, U.S. Coast Guard
Captain of the Port Hampton Roads
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8/17/2015]