



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0675]

RIN 1625-AA87

Security Zone; Potomac River and Anacostia River, and adjacent waters; Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a series of security zones in the National Capital Region (NCR) on specified waters of the Potomac River and Anacostia River, and adjacent waters during increased security events. This action is necessary to prevent terrorist acts and incidents immediately before, during, and after events held within the NCR, whenever such an event exists, as determined by the Captain of the Port Maryland-National Capital Region. This rule prohibits vessels and persons from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Maryland-National Capital Region. The regulations will enhance the safety and security of persons and property within the Nation's Capital, while minimizing, to the extent possible, the impact on commerce and legitimate waterway use.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0675 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald L. Houck, at Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

On September 2, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Security Zone; Potomac River and Anacostia River, and adjacent waters; Washington, DC" in the Federal Register (81 FR 60663). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended November 1, 2016, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP determined that it is necessary to establish a series of security zones within the NCR. The purpose of these security zones is to ensure the safety of vessels and the relevant navigable waters

before, during, and after the event..

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on September 2, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a series of security zones on specified waters of the Potomac River, Anacostia River and adjacent waters. The security zones cover specified navigable waters within the NCR whenever an event that requires increased security is taking place. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the event. No vessel or person would be permitted to enter the security zone without obtaining permission from the COTP or a designated representative. The COTP Maryland-National Capital Region will notify the maritime community, via Broadcast Notice to Mariners (BNM), of the location and duration of the security zone as the increased security event dictates. The security zone established for a specific increased security event will consist of one or more of the security zones categorized below.

Security zone one includes all navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by the Francis Scott Key (US-29) Bridge, at mile 113, and bounded to the south by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51'21.3" N, 077°02'00.0" W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51'24.3" N, 077°01'19.8" W, including the waters of the Boundary Channel, Pentagon Lagoon, Georgetown Channel Tidal Basin, and Roaches Run. Events that typically require enforcement of the zone include activities

associated with the U.S. Presidential Inauguration and State funerals for former Presidents of the U.S.

Security zone two includes all navigable waters of the Anacostia River, from shoreline to shoreline, bounded to the north by the John Philip Sousa (Pennsylvania Avenue) Bridge, at mile 2.9, and bounded to the south by a line drawn from the District of Columbia shoreline at Hains Point at position 38°51'24.3" N, 077°01'19.8" W, southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50'52.4" N, 077°01'10.9" W, including the waters of the Washington Channel. Events that typically require enforcement of the zone include activities associated with the U.S. Presidential Inauguration and State funerals for former Presidents of the U.S.

Security zone three includes all navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51'21.3" N, 077°02'00.0" W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51'24.3" N, 077°01'19.8" W, thence southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50'52.4" N, 077°01'10.9" W, and bounded to the south by the Woodrow Wilson Memorial (I-95/I-495) Bridge, at mile 103.8. Events that typically require enforcement of the zone include activities associated with the U.S. Presidential Inauguration and State funerals for former Presidents of the U.S.

The above zones may also be enforced for unplanned events requiring increased security, including but not limited to presidential nominating conventions; international summits and conferences; and meetings of international organizations.

Security zone four includes all navigable waters of the Georgetown Channel of the Potomac River, 75 yards from the eastern shore measured perpendicularly to the shore, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge Complex) to the Theodore Roosevelt Memorial Bridge and all waters in between, totally including the waters of the Georgetown Channel Tidal Basin. This zone is enforced annually from 12:01 a.m. to 11:59 p.m. local time on July 4.

Security zone five includes all navigable waters in the Potomac River, including the Boundary Channel and Pentagon Lagoon, bounded on the west by a line running north to south from points along the shoreline at 38°52'50"N/077°03'25"W, thence to 38°52'49"N/077°03'25"W; and bounded on the east by a line running from points at 38°53'10"N/077°03'30"W, thence northeast to 38°53'12"N/077°03'26"W, thence southeast to 38°52'31"N/077°02'34"W, and thence southwest to 38°52'28"N/077°02'38"W . This zone will be enforced on three days each year: Memorial Day (observed), September 11, and November 11. Specifically, the zone will be enforced from 10 a.m. until 1 p.m. on Memorial Day (observed); from 8 a.m. until 11:59 a.m. on September 11; and from 10 a.m. until 1 p.m. on November 11.

Security zone six includes all navigable waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge at mile 113.0, downstream to and bounded on the south by the Woodrow Wilson Memorial (I-95/I-495) Bridge, at mile 103.8, including the waters of the Boundary Channel, Pentagon Lagoon, Georgetown Channel Tidal Basin, and Roaches Run; and all waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the John Philip Sousa (Pennsylvania Avenue) Bridge, at mile 2.9, downstream to and bounded on the south by its confluence with the Potomac River. This

zone will be enforced annually for the State of the Union Address, starting at 9 a.m. on the day of the State of the Union Address through 2 a.m. the following day.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration and time of year of the security zones. The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: security zones one, two and three are expected to be enforced for only a week or two at a time and on only a few occasions per year. Additionally, the Coast Guard designed the areas for security zones one, two and three to cover only a portion of the navigable waterways while still sustaining the flow of commerce, and mariners may request permission from the COTP Maryland-National Capital Region or the designated representative to transit the zone. Security zones four and five are expected to be enforced for only less than 24 hours at a time and on only a few occasions per year. Additionally, the Coast Guard designed the areas for security zones four and five to cover only a small portion

of the navigable waterways, waterway users may transit the Potomac River around the areas, and mariners may request permission from the COTP Maryland-National Capital Region or the designated representative to transit the zone. Security zone six is expected to be enforced for only less than 24 hours at a time and on only on one occasion per year when vessel traffic is normally low. Additionally, the Coast Guard designed the area for security zone six to cover only a portion of the navigable waterways while still sustaining the flow of commerce, and mariners may request permission from the COTP Maryland-National Capital Region or the designated representative to transit the zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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 received no comments from the Small Business Administration on this rulemaking. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 section.

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.

C. 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).

D. Federalism and Indian Tribal Governments

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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(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 security zones that would prohibit entry on specified waters of the Potomac River and Anacostia River, and adjacent waters, during increased security events. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may

lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

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, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.508 to read as follows:

§ 165.508 Security Zone; Potomac River and Anacostia River, and adjacent waters;

Washington, DC.

(a) **Location.** Coordinates used in this paragraph are based on NAD83. The following areas are security zones:

(1) **Zone 1.** All navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by the Francis Scott Key (US-29) Bridge, at mile 113, and bounded to the south by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51'21.3" N, 077°02'00.0" W, eastward across the Potomac River to the District of Columbia

shoreline at Hains Point at position 38°51'24.3" N, 077°01'19.8" W, including the waters of the Boundary Channel, Pentagon Lagoon, Georgetown Channel Tidal Basin, and Roaches Run;

(2) Zone 2. All navigable waters of the Anacostia River, from shoreline to shoreline, bounded to the north by the John Philip Sousa (Pennsylvania Avenue) Bridge, at mile 2.9, and bounded to the south by a line drawn from the District of Columbia shoreline at Hains Point at position 38°51'24.3" N, 077°01'19.8" W, southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50'52.4" N, 077°01'10.9" W, including the waters of the Washington Channel;

(3) Zone 3. All navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51'21.3" N, 077°02'00.0" W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51'24.3" N, 077°01'19.8" W, thence southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50'52.4" N, 077°01'10.9" W, and bounded to the south by the Woodrow Wilson Memorial (I-95/I-495) Bridge, at mile 103.8.

(4) Zone 4. All navigable waters of the Georgetown Channel of the Potomac River, 75 yards from the eastern shore measured perpendicularly to the shore, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge Complex) to the Theodore Roosevelt Memorial Bridge; and all waters in between, totally including the waters of the Georgetown Channel Tidal Basin.

(5) Zone 5. All navigable waters in the Potomac River, including the Boundary Channel and Pentagon Lagoon, bounded on the west by a line running north to south from points along the shoreline at 38°52'50"N, 077°03'25"W, thence to 38°52'49"N, 077°03'25"W; and bounded on

the east by a line running from points at 38°53'10"N, 077°03'30"W, thence northeast to 38°53'12"N, 077°03'26"W, thence southeast to 38°52'31"N, 077°02'34"W, and thence southwest to 38°52'28"N, 077°02'38"W.

(6) Zone 6. All navigable waters described in paragraphs (a)(1) through (a)(3) of this section.

(b) Regulations. The general security zone regulations found in 33 CFR 165.33 apply to the security zones created by this section, § 165.508.

(1) Entry into or remaining in a zone listed in paragraph (a) in this section is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. Public vessels and vessels already at berth at the time the security zone is implemented do not have to depart the security zone. All vessels underway within the security zone at the time it is implemented are to depart the zone at the time the security zone is implemented.

(2) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Maryland-National Capital Region or his or her designated representative. To seek permission to transit the area, the Captain of the Port Maryland-National Capital Region and his or her designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Maryland-National Capital Region or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(3) The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zones listed in paragraph (a) in this section by Federal, State, and local agencies.

(c) Definitions. As used in this section:

Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his or her behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the security zones described in paragraph (a) of this section.

Public vessel means a vessel that is owned or demise-(bareboat) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.

(d) Enforcement. (1) In addition to the specified times in paragraphs (d)(2) through(4) of this section, the security zones created by this section will be enforced only upon issuance of a notice of enforcement by the Captain of the Port Maryland-National Capital Region. The Captain of the Port Maryland-National Capital Region will cause notice of enforcement of these security zones to be made by all appropriate means to the affected segments of the public of the enforcement dates and times of the security zones including publication in the **FEDERAL REGISTER**, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners.

(2) Security Zone 4, established in paragraph (a)(4) of this section, will be enforced annually, from 12:01 a.m. to 11:59 p.m. on July 4.

(3) Security Zone 5, established in paragraph (a)(5) of this section, will be enforced annually on three dates: Memorial Day (observed), September 11, and November 11. Security Zone 5 will be enforced from 10 a.m. until 1 p.m. on Memorial Day (observed); from 8 a.m. until 11:59 a.m. on September 11; and from 10 a.m. until 1 p.m. on November 11.

(4) Security Zone 6, established in paragraph (a)(6) of this section, will be enforced annually on the day the State of the Union Address is delivered. Security Zone 6 will be enforced from 9 a.m. on the day of the State of the Union Address until 2 a.m. on the following day.

(e) Suspension of enforcement. (1) The Captain of the Port Maryland-National Capital Region may suspend enforcement of the enforcement period in paragraphs (d)(1) through(4) in this section earlier than listed in the notice of enforcement. Should the Captain of the Port Maryland-National Capital Region suspend the zone earlier than the duration listed, he or she will make the public aware of this suspension by Broadcast Notice to Mariners and/or on-scene notice by his or her designated representative.

Dated: November 9, 2016

Lonnie P. Harrison, Jr.
Captain, U.S. Coast Guard
Captain of the Port Maryland-National Capital Region.
[FR Doc. 2016-27628 Filed: 11/16/2016 8:45 am; Publication Date: 11/17/2016]