



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0079]

RIN 1625-AA87

Security Zone; Delaware River, Schuylkill River; Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone within portions of the Delaware River, and Schuylkill River, for the protection of Very Important Persons (VIP) who arrive and depart from Philadelphia International Airport, Philadelphia, PA. This rule is necessary to expedite the establishment and enforcement of the security zones when short notice is received by the Coast Guard for VIP(s) traveling to the Philadelphia area. This rule will ensure safety and security for the visiting VIP. The permanent security zone will be enforced only during times of VIP transit and will restrict vessel traffic while the zone is being enforced. Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative may enter or remain in the regulated area.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2017-0079

using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Petty Officer Amanda Boone, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215)271-4814, e-mail Amanda.N.Boone@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On occasion VIP(s) will arrive and depart Philadelphia International Airport, Philadelphia, PA, located within Coast Guard Sector Delaware Bay Captain of the Port (COTP) zone. These VIP visits require the implementation of heightened security measures for protection of VIP(s) who may travel over or on portions of the Delaware River and Schuylkill River.

The purpose of this rulemaking is to protect the VIP and the public from destruction, loss, or injury from sabotage, subversive acts, or other malicious or potential terrorist acts.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation

No. 0170.1.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent security zone within portions of the Delaware River and Schuylkill River for the protection of VIP's who arrive and depart from Philadelphia International Airport, Philadelphia, PA. This rule is necessary to expedite the establishment and enforcement of security zones when short notice is provided to the COTP for VIPs traveling to or from Philadelphia include the following areas:

(1) all waters of the Delaware River in the vicinity of Philadelphia International airport, within an area bound to the west by a line drawn from the New Jersey shoreline at Thompson Point, latitude 39° 50' 37"N., longitude 75° 18' 23"W., thence northwest to the Pennsylvania shoreline at latitude 39°51'45"N., longitude 75°18'46"W.; thence up river and bound shoreline to shoreline; bound to the east by a line drawn from the New Jersey shoreline at latitude 39°52'28"N., longitude 75°11'14"W., and thence northwest to the Pennsylvania shoreline near the eastern side of mouth to the Schuylkill River at latitude 39°53'05"N., longitude 75°11'34"W.; the security zone extends north into the waters of Schuylkill River, bound from shoreline to shoreline, including the waters of Schuylkill River adjacent to the Navy Yard Reserve Basin Bridge, and terminates along a line drawn from latitude 39°54'04"N., longitude 75°12'56"W., thence eastward across the Schuylkill River to latitude 39°54'07"N., longitude 75°12'48"W, located approximately 500 yards northwest and parallel with the George C. Platt Memorial – Penrose Avenue lift-bridge.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: Although the security zone area covers only a large portion of the navigable waterways, mariners may request permission from COTP Coast Guard Sector Delaware Bay or the designated representative to transit or remain in the security zone. Furthermore the duration of the security zone would not significantly impact vessel because of the small amount of time it takes for VIP transits to and from the airport. Advance notifications would be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners, Marine information and facsimile broadcasts so mariners can adjust their plans accordingly.

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 certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule adjusts rates in accordance with applicable statutory and regulatory mandates. Normally such actions are categorically excluded from further review under section 2.B.2, and figure 2-1, paragraph 34(g) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. A preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 proposes to amend 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, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.557 to read as follows:

§ 165.557 Security Zone; Delaware River, and Schuylkill River, Philadelphia, PA.

(a) Location. The following areas are security zones: All waters of the Delaware River in the vicinity of Philadelphia International airport, within an area bound to the west by a line drawn from the New Jersey shoreline at Thompson Point, latitude 39° 50' 37"N., longitude 75°

18' 23"W., thence northwest to the Pennsylvania shoreline at latitude 39°51'45"N., longitude 75°18'46"W.; thence up river and bound shoreline to shoreline; bound to the east by a line drawn from the New Jersey shoreline at latitude 39°52'28"N., longitude 75°11'14"W., and thence northwest to the Pennsylvania shoreline near the eastern side of mouth to the Schuylkill River at latitude 39°53'05"N., longitude 75°11'34"W.; the security zone extends north into the waters of Schuylkill River, bound from shoreline to shoreline, including the waters of Schuylkill River adjacent to the Navy Yard Reserve Basin Bridge, and terminates along a line drawn from latitude 39°54'04"N., longitude 75°12'56"W., thence eastward across the Schuylkill River to latitude 39°54'07"N., longitude 75°12'48"W, located approximately 500 yards northwest and parallel with the George C. Platt Memorial – Penrose Avenue lift-bridge.

(b) Definitions. The following definitions apply to this section:

(1) Designated representative. A designated representative is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official patrol vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessels assigned or approved by the COTP.

(c) Regulations. (1) In accordance with the general regulations contained in § 165.33, entry into or movement within this zone is prohibited unless authorized by the COTP, Sector Delaware Bay or designated representative.

(2) To request permission to enter the regulated area contact the COTP or the COTP's representative on VHF-FM channel 16. Vessel operators and persons within the security zone

must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(d) Enforcement. This security zone will be enforced with actual notice by the U. S. Coast Guard representatives on scene, as well as other methods listed in 33 CFR 165.7.

Dated: May 8, 2017.

Benjamin A. Cooper,
Captain, U. S. Coast Guard,
Captain of the Port, Delaware Bay.
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