



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0933]

RIN 1625-AA87

Security Zone; Cooper River; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on certain navigable waters of the Cooper River within a 500-yard radius of the South Carolina State Port Authority Cruise Ship Terminal in Charleston, SC during a visit by the Commandant of the United States Coast Guard. This action is necessary to protect personnel from potential hazards and security risk associated with the Commandant's speaking engagement. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the Captain of the Port Charleston (COTP) or a designated representative.

DATES: This rule is effective from 10:30 a.m. to 3:30 p.m. on February 20, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0933 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 about this rulemaking, call or email Lieutenant Chad Ray, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, e-mail Chad.L.Ray@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

II. Background Information and Regulatory History

On November 18, 2019, Sector Charleston personnel were notified that the Commandant of the U.S. Coast Guard will give the State of the Coast Guard Address at the South Carolina State Port Authority Cruise Ship Terminal on the Cooper River in Charleston, SC. In response, on January 6, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Security Zone; Cooper River; Charleston, SC” (85 FR 271, Docket Number USCG-2019-0933). 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 January 21, 2020, we received no comments. However, after the comment period ended, Sector Charleston was notified that additional dignitaries would be present before, during and after the State of the Coast Guard Address. This will require the duration of the security zone to be expanded by 3 hours. Therefore, the Coast Guard is issuing this temporary rule for this security zone that expands the security zone by 3 hours contained in the NPRM 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 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 NPRM with respect to this rule that expands the time of the proposed original security zone by 3 hours because it would be impractical to publish an NPRM for this change because we must establish this security zone by February 20 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The security zone will impact waters of the Cooper River in Charleston, SC. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the event would be a security concern for participants, spectators, and others on the navigable waters around the event.

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**. Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed based on numerous agencies previously agreeing on the date of February 20, 2020 and logistical steps have been taken to facilitate the event taking place on this date. The security zone is necessary to ensure the safety of the event participants, as well as spectators.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Charleston (COTP) has

determined that there are potential security risks associated with the Commandant's speaking engagement. The purpose of this rule is to ensure safety and security of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on January 6, 2020. However, there is one change in the regulatory text of this rule from the proposed rule in the NPRM to account for the additional time needed to secure the area during the presence of dignitaries that will be in attendance before, during and after the State of the Coast Guard.

This rule establishes a security zone from 10:30 a.m. to 3:30 p.m. on February 20, 2020. The security zone will cover all navigable waters within a 500-yard radius of the South Carolina State Port Authority Cruise Ship Terminal in Charleston, SC. The duration of the zone is intended to ensure the security of persons, vessels, and these navigable waters before, during, and after the scheduled address. No vessels or person would be permitted to enter the security zone without obtaining permission from the COTP or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP by telephone at (843) 740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The COTP will provide notice of the security zone by Local Notice to Mariners, Broadcast Notice to

Mariners, and on-scene designated representatives. The regulatory text appears at the end of this document.

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by Sector Charleston COTP or a designated representative; (2) vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from Sector Charleston COTP or a designated representative may operate in the surrounding areas during the enforcement period; (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners; and (4) the

regulated area will be limited in time, scope, and only impact small designated areas of the Cooper River.

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 call or email 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 implication for federalism or Indian tribes, please call or email 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 Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 a five hour security zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the Cooper River during the State of the Coast Guard Address by Commandant of the U.S. Coast Guard. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; and Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0933 to read as follows:

§ 165.T07-0933 Security Zone; Cooper River, Charleston, SC.

(a) **Location.** All waters of the Cooper River within a 500-yard radius the South Carolina State Port Authority Cruise Ship Terminal in Charleston, SC.

(b) **Definition.** The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Charleston in the enforcement of the regulated areas.

(c) **Regulations.** (1) All persons and vessels are prohibited from entering, transiting

through, anchoring in, or remaining within the regulated area unless authorized by the COTP Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Charleston by telephone at 843-740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement period. This section will be enforced from 10:30 a.m. to 3:30 p.m. on February 20, 2020.

Dated: February 5, 2020.

J. W. Reed,
Captain, U.S. Coast Guard,
Captain of the Port Charleston.

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