



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0264]**

**RIN 1625-AA87**

**Security Zone; HMS MEDWAY, St. Johns River, Jacksonville, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary moving security zone for navigable waters 500 yards around the HMS MEDWAY during the vessel's transit from the St. Johns River Sea Buoy until BAE Systems Shipyard, and while it remains docked at BAE Systems Shipyard, Mayport, FL starting May 17, 2020. The security zone is needed to protect personnel and government property from potential hazards associated with waterborne security incidents and recreational marine traffic while the vessel transits to their assigned berth space at BAE Systems Shipyard, Mayport, FL and while docked at BAE Systems Shipyard. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Jacksonville.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 4 p.m. on June 14, 2020. For purposes of enforcement, actual notice will be used from 4 a.m. May 17, 2020 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0264 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 LT Emily Sysko, Sector Jacksonville, Waterways Management, U.S. Coast Guard; telephone 904-714-7662, email [Emily.T.Sysko@uscg.mil](mailto:Emily.T.Sysko@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary 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 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 because it is impracticable. The Coast Guard was notified of the vessel arrival on May 8, 2020. The Royal Navy vessel and personnel will be entering the area and immediate action is needed to respond to the potential security hazards associated with their visit. It is

impracticable to publish an NPRM because we must establish this security zone by May 17, 2020.

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 because immediate action is needed to respond to the potential hazards associated with waterborne security threats.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Jacksonville (COTP) has determined that potential hazards associated with waterborne threats as a result of the HMS MEDWAY entering the St. Johns River starting May 17, 2020, will be a potential security concern for the Royal Navy vessel as it passes the St. Johns River Sea Boy, while transits to their assigned berth at BAE Systems Shipyard, and while docked at the BAE Systems Shipyard in Mayport, FL. This rule is needed to protect personnel and government officials from potential hazards associated with vessels coming within 500 yards of the HMS MEDWAY.

### **IV. Discussion of the Rule**

This rule establishes a temporary moving security zone from 4 a.m. May 17, 2020 until June 14, 2020. The security zone will encompass navigable waters within a 500 yard radius around the HMS MEDWAY as the vessel transits the St. Johns River to BAE Systems Shipyard, MAYPORT, FL and while docked at the BAE Systems Shipyard. The duration of the zone is intended to protect personnel and government property during the vessel's transit from the St. Johns River Sea Buoy to BAE Systems Shipyard, and while docked at BAE Systems Shipyard, Mayport, FL. No vessel or person will be permitted to

enter the security zone without obtaining permission from the COTP or a designated representative.

## **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 the time and duration the HMS MEDWAY’s anticipated transit time in the St. Johns River. Vessel traffic will be able to safely transit around this security zone which would impact a small area of the St. Johns River while the HMS MEDWAY transits the waterway and is docked at their assigned berth at BAE Systems Shipyard, Mayport, FL. Moreover, the Coast Guard will 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 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 security 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.

*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 security zone that will prohibit entry within navigable waters outlined in the Discussion of the Rule above. 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 record keeping 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 and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0264 to read as follows:

**§ 165.T07-0264 Security Zone; HMS MEDWAY, St. Johns River, Jacksonville, FL.**

(a) *Location.* The following is a security zone: The security zone will encompass navigable waters within a 500 yard radius around HMS MEDWAY during the vessel's transit from the St. Johns River Entrance Buoy to its assigned berth at BAE Systems Shipyard, Mayport, FL, and will remain around the vessel while docked at BAE Systems Shipyard.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and Federal, State, and local officers designated by or assisting the Captain of the Port Jacksonville (COTP) in the enforcement of the security zone.

(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 Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at (904) 714-7557, or a designated representative via VHF-FM 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 Jacksonville or a designated

representative.

(3) The Coast Guard will provide notice of the regulated area through Broadcast Notice to Mariners via VHF-FM channel 16 or by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 4 a.m. May 17, 2020 until 4 p.m. on June 14, 2020.

Dated: May 15, 2020.

M. R. Vlaun,

Captain, U.S. Coast Guard,

Captain of the Port Jacksonville.

[FR Doc. 2020-12245 Filed: 6/4/2020 8:45 am; Publication Date: 6/5/2020]