



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0130]

RIN 1625-AA87

Security Zone; Atlantic Ocean; Surfside Beach, South Carolina

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for certain navigable waters of the Atlantic Ocean near or in the vicinity of Surfside Beach, South Carolina. The temporary security zone is needed to protect the public, persons, vessels, and the marine environment from potential hazards created by physical objects in the subject navigable waters. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Charleston, or designated representative.

DATES: This rule is effective without actual notice from February 6, 2023, through February 18, 2023. For the purposes of enforcement, actual notice will be used from February 4, 2023, through February 6, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0130 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Sector Charleston Command Center, U.S. Coast Guard, Telephone: 843-740-7050, email: d05-smb-d5cc@uscg.mil and RCCMiami@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
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

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. It is impracticable because immediate action is required, and we lack sufficient time to collect and address public comments before the effective date of this rule.

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 contrary to the public interest because immediate action to restrict vessel traffic is needed to protect life, property, and the environment.

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 (COTP) Sector Charleston has determined this rule is needed to enhance public and maritime safety and security from potential hazards associated with physical objects in certain navigable waters near or in the vicinity of Surfside Beach, South Carolina.

IV. Discussion of the Rule

The U.S. Coast Guard is establishing a temporary security zone, for certain navigable waters near or in the vicinity of Surfside Beach, South Carolina, to include a 10 nautical mile area of the U.S. territorial sea extending from the point 33°37'N 078°39'W. The temporary security zone is intended to protect the public, persons, vessels, and the marine environment from potential hazards associated with physical objects in certain navigable waters near or in the vicinity of Surfside Beach, South Carolina. It will be enforced every day from midnight to 11:59 P.M.

No vessel or person is permitted to enter the security zone without obtaining permission from the COTP Sector Charleston, or a designated representative. A designated representative is any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a federal, state, and local officer designated by or assisting the COTP Sector Charleston in the enforcement of the temporary security zone. To seek permission to enter, contact the COTP Sector Charleston or a designated representative via VHF-FM channel 16, or through the Sector Surfside Beach Command Center at 843-740-7050. Vessels or persons permitted to enter the security zone must comply with all lawful orders or directions issued by the COTP Sector Charleston or designated representative. The COTP Sector Charleston or a designated representative will inform the public of the effective period for the security zone as well as any changes in the dates and times of

enforcement through Local Notices to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

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. 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).

This regulatory action determination is based on the size, location, and limited duration of the security zone. This zone impacts a 320 square nautical mile area near or in the vicinity of Surfside Beach, South Carolina, with a limited duration of 14 days.

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 this temporary 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 lasting for two weeks within certain navigable waters near or in the vicinity of Surfside Beach, South Carolina. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Due to the urgency of the event, a record of environmental consideration supporting this determination is not required but will be provided as necessary.

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, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-0130 to read as follows:

§ 165.T05-0130 Security Zone; Atlantic Ocean; Surfside Beach, South Carolina.

(a) *Location.* The following area is a security zone: certain navigable waters of the Atlantic Ocean near or in the vicinity of Surfside Beach, South Carolina, to include a 10 nautical mile area of the U.S. territorial sea extending from the point 33°37'N 078°39'W.

- (b) *Definitions.* As used in this section---

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Sector Charleston in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP Sector Charleston or a designated representative.

(2) To seek permission to enter, contact the Sector Charleston Command Center via VHF-FM Channel 16, or telephone at 843-740-7050. Vessels and persons permitted

to enter the security zone must comply with all lawful orders or directions issued by the COTP Sector Charleston or a designated representative.

(d) *Enforcement period.* This section will be enforced from February 4, 2023, through February 18, 2023. It will be enforced every day from midnight to 11:59 p.m.

(e) *Information Broadcasts.* The COTP Sector Charleston or a designated representative will inform the public of effective period for the temporary security zone as well as any changes in the dates and times of enforcement through local notice to mariners (LNMs), broadcast notice to mariners (BNMs), and/or marine safety information broadcasts (MSIBs), or as appropriate.

Dated: February 4, 2023

John D. Cole,
Captain, U.S. Coast Guard
Captain of the Port, Sector Charleston

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