



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0987]

RIN 1625-AA00

Safety Zone; James River, Newport News, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the James River within 1500-foot radius of the M/V SS DEL MONTE, in the vicinity of the James River Reserve Fleet, in support of United States Navy explosive training on the M/V SS DEL MONTE. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the United States Navy explosives training. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Hampton Roads.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 4 p.m. on December 16, 2016. For the purposes of enforcement, actual notice will be used from 8 a.m. on December 12, 2016, through [INSERT 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-2016-0987 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 LCDR Barbara Wilk, Sector Hampton Roads Waterways Management, U.S. Coast Guard; telephone 757–668–5580, email [Hamptonroadswaterway@uscg.mil](mailto:Hamptonroadswaterway@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 information about the training starting at 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016, was not received by the Coast Guard until October 25, 2016. Failure to conduct this required training at this time will result in a lapse in personnel qualification standards and, consequently, the inability of Navy personnel to carry out

important national security functions. Due to the timing of the notification it would be impracticable for the Coast Guard to publish an NPRM because there is insufficient time to allow for an opportunity for public comment on the proposed rule. Publishing an

NPRM would be contrary to the public interest since immediate action is necessary to protect the public safety by ensuring the standards of training are met. The potential hazards to mariners within the safety zone include shock waves, flying shrapnel, and loud noises. We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. As noted above, failure to conduct this required training at this time will result in a lapse in personnel qualification standards and, consequently, the inability of Navy personnel to carry out important national security functions. Due to the need for immediate action, the restriction on vessel traffic is necessary to protect life, property and the environment. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

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

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Hampton Roads (COTP) has determined that potential hazards associated with the military training starting at 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016, will be a safety concern for anyone within a 1500-foot radius of the M/V SS DEL MONTE. This rule is needed to protect the participants, patrol vessels, and other vessels transiting the navigable waters of the James River, in the vicinity of the James River Reserve Fleet, from hazards associated with military

explosives operations. The potential hazards to mariners within the safety zone include shock waves, flying shrapnel, and loud noises.

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

This rule establishes a safety zone from 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016. The safety zone will encompass all navigable waters within a 1500-foot radius of the M/V SS DEL MONTE located in approximate position 37°06'11"N, 076°38'40"W. The duration of the zone is intended to protect personnel and vessels in these navigable waters while the training is in effect. This safety zone still allows for navigation on the waterway around the safety zone. Access to the safety zone will be restricted during the effective period. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

#### **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**

This rule is not a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this rule to be nominal. This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone which will impact a small designated area of the James River in Newport News, Virginia, beginning at 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016. The safety zone will occur during a time of year when vessel traffic is normally low and vessel; traffic will be able to safety transit around the safety zone. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via

VHF-FM marine channel 16 about the zone and the rule allows 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 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 above.

#### 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 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 a safety zone lasting less than 4 days that will prohibit entry within 1500 feet of the M/V SS DEL MONTE along the James River. 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.

#### H. Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive order 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### **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; 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.T05-0987 to read as follows:

165.T05-0987 Safety Zone, James River; Newport News, VA.

(a) Definitions. For the purposes of this section--

Captain of the Port means the Commander, Sector Hampton Roads.

Participants mean individuals and vessels involved in explosives training.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone: All waters in the vicinity of the of the James River Reserve Fleet, in the James River, within a 1500-foot radius of the M/V SS DEL MONTE in approximate position 37°06'11"N, 076°38'40"W (NAD 1983).

(c) Regulations.

(1) The general regulations governing safety zones in §165.23 apply to the area described in paragraph (b) of this section.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668-5555.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels except participants and vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation, and
- (iii) Emergency response vessels.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) Enforcement Period. This rule will be enforced from 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016.

RICHARD J. WESTER,  
*CAPTAIN, U.S. Coast Guard,*  
*Captain of the Port Hampton Roads.*

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