



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2017-0152]

RIN 1625-AA87

Security Zone; Schuylkill River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary security zone on the waters of the Schuylkill River, Philadelphia, PA. This temporary security zone is intended to restrict vessels from portions of the Schuylkill River during the 2017 National Football League (NFL) Draft from April 27 through April 29, 2017. During the enforcement period, no unauthorized vessels or people will be permitted to enter or move within the security zone without permission from the Captain of the Port or designated representative. This security zone is necessary to provide security on navigable waters near the event.

**DATES:** This rule is effective without actual notice from April 27, 2017 through 6:00 p.m. on April 29, 2017. For purposes of enforcement, actual notice will be used from 10:00 a.m. on April 27 through April 27, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0152 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 e-mail MST1 Thomas Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215)271-4889, e-mail Tom.J.Simkins@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary final 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 with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for the security zone were not known until April 10, 2017, preventing the Coast Guard from issuing a notice of proposed rulemaking with opportunity for public comment. Delaying this action to allow an opportunity for public comment would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection near the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the *Federal Register* because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection near the event.

### **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 Delaware Bay has determined that this temporary security zone is necessary to provide security during the NFL Draft, and protect against sabotage or terrorist attacks to human life, vessels, mariners, and waterfront facilities at or near this event.

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

From April 27, 2017 through April 29, 2017, the NFL Draft will take place at the Philadelphia Museum of Art in Philadelphia, PA. The Coast Guard is establishing a temporary security zone in a portion of the Schuylkill River, Philadelphia, PA. The security zone includes all the waters of the Schuylkill River from the Market Street Bridge north to the Fairmount dam.

Access to this security zone will be restricted during the specified date and time period. Only vessels or persons specifically authorized by the Captain of the Port Delaware Bay or designated representative may enter or remain in the regulated area. This security zone will be effective and enforced from April 27, 2017 through April 29, 2017.

### **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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the security zone. Vessel traffic will be able to safely transit around this security zone which will impact a small designated area of the Schuylkill River, Philadelphia, PA, for less than 12 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the security zone, under the regulation vessel operators may request 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 (Pub. L. 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 calls for no 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 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 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 it is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. It is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(g) of the Instruction, which pertains to minor regulatory changes that are editorial or procedural in nature. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble.

#### 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.

#### 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.T05-0152 to read as follows:

§ 165.T05-0152 Security Zone; Schuylkill River; Philadelphia, PA.

(a) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer operating a Coast Guard vessel and a Federal, State, and local law enforcement officer designated by or assisting the Captain of the Port, Delaware Bay in the enforcement of the security zone.

(b) Location. The following area is a security zone: all the waters of the Schuylkill River from the Market Street Bridge north to the Fairmount dam.

(c) Regulations. (1) Under the general security zone regulations in subpart D of this part, persons may not enter the security zone described in paragraph (b) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To request permission to enter the security zone, contact the COTP or the COTP's representative on VHF-FM channel 16. All persons and vessels in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This section will be enforced from April 27, 2017 through April 29, 2017 from 10:00 a.m. to 6:00 p.m. each day.

Dated: April 24, 2017.

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