



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2017-0448]**

**RIN 1625-AA87**

**Security Zone; Potomac River, Montgomery County, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule and request for comments.

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**SUMMARY:** This interim rule modifies the existing security zone that covers waters of the Potomac River next to Trump National Golf Club at Potomac Falls, VA. The security zone prevents waterside threats and incidents while persons protected by the Secret Service are at the club. This rule reduces the overall length of the existing security zone and creates a 250-yard-wide transit lane that provides passage for vessels through the zone near the Maryland shoreline with permission of the Captain of the Port (COTP) or designated representative. This rule continues to prohibit vessels and people from entering the security zone unless specifically exempt under the provisions in this rule or granted specific permission from the COTP Maryland-National Capital Region or designated representative. It also governs activities of vessels and persons already in the security zone when activated. The security zone enhances the safety and security of persons while minimizing, to the extent possible, the impact on commerce and legitimate waterway use. We invite your comments on this rulemaking.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Documents mentioned in this preamble are part of Docket Number USCG-2017-0448. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click "SEARCH." Click on “Open Docket Folder” on the line associated with this rulemaking. You may submit comments, identified by docket number, using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email Mr. Ronald L. Houck, at Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
IFR	Interim final rule
MD-DNR	Maryland Department of Natural Resources
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
USSS	United States Secret Service

### **II. Basis and Purpose, and Regulatory History**

The Ports and Waterways Safety Act, as amended, provides the Coast Guard the authority to establish water or waterfront safety zones, or other measures, for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area, 46 U.S.C. 70011(b)(3). On several occasions between March 24, 2017, and July 10, 2017, the USSS requested that the U.S. Coast Guard close the Potomac River during events held at the Trump National Golf Club at Potomac Falls, VA, to protect persons protected by the USSS, hereafter referred to as “USSS protectees.” The Coast Guard did not have sufficient notice of these events to provide opportunity for public comment prior to these rules taking effect, and advance public notice of specific events could thwart the purpose of the security zone. As required by 5. U.S.C. 553, the Administrative Procedure Act, the Coast Guard found that good cause existed for not providing the normal notice and comment procedure.

Given the frequency of the past need for a security zone at this location and the likelihood for similar events to continue in the foreseeable future, the Coast Guard

determined that a permanent security zone would be the preferable course of action. We would be able to provide advance notification to the public that a security zone may be enforced in the future at this location and provide the public with an opportunity to provide feedback to the agency—neither of which we had been able to do before. The Coast Guard published an IFR, “Security Zone; Potomac River, Montgomery County, MD” on July 10, 2017 (82 FR 31719). The rule was written with the same geographic scope and operating requirements as the previous temporary rulemakings, to be activated and enforced at the request of the USSS. The rule was made immediately effective to prevent the need for additional temporary final rules, but provided the public a 30-day comment period.

In response to the IFR, the Coast Guard received 636 submissions to the docket. After reviewing the public input, the COTP Maryland-National Capital Region is modifying the security zone established by the IFR. The legal authority for this rule is 46 U.S.C. 70034, as delegated by Department of Homeland Security Delegation No. 0170.1, section II, paragraph 70, from the Secretary of Homeland Security to the Commandant of the United States Coast Guard and further redelegated by 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5 to the Captains of the Port. This rule safeguards the lives of persons protected by the Secret Service, and of the general public, by enhancing the safety and security of navigable waters of the United States during heightened security events at the Trump National Golf Club.

Because this rule relieves a restriction, 5 U.S.C. 553(d)(1) of the Administrative Procedure Act allows this rule to take effect less than 30 days after publication in the Federal Register. This rule relieves the restrictions imposed by the original IFR that

created this security zone. The Coast Guard is reducing the size of the zone both on the upriver portion of the security zone near Sharpshin Island and on the downriver portion of the security zone near the dam at Seneca Breaks. This reduction in length will allow increased river access from Algonkian Park west of the Trump National Golf Club. East of the golf course, the reduction in length will allow waterway users to transit across the river just upstream from the Seneca Breaks, allowing water access to the George Washington (GW) Canal and Patowmack Canal, which is popular for paddling.

### **III. Discussion of Comments**

We received 636 comments on our interim rule published July 10, 2017. The Coast Guard considered all of these comments and has made revisions to the security zone in response. The comments received are available for public inspection at [www.regulations.gov](http://www.regulations.gov) under docket USCG-2017-0448. In addition to changes made in response to the comments, we also made small editorial revisions for grammar and to clarify language that was potentially unclear. Unless specifically described in the preamble to this rule, such revisions were not intended to change the meaning of the language that was revised.

#### *1. Who is affected by the security zone?*

A large number of commenters expressed concern about the rule's impacts on the wide variety of people who regularly use the portion of the river within the security zone. Commenters stated veterans, specifically disabled veterans, would be impacted because rehabilitative kayak/canoe training and classes are held near Riley's Lock (Lock 24) and Violette's Lock (Lock 23), both located on the Maryland side of the river across from the Trump National Golf Club. We were also informed that professional athletic teams use

this part of the river for training. Many commenters were concerned about impact on the two summer camps for local youth that operate on the Maryland side across from Trump National Golf Club. Camp attendees for both camps access the Potomac River at Riley's Lock for kayaking, canoeing, and sailing lessons. Commenters also stated that the security zone impacts recreational boaters, jet skiers, swimmers, hunters, fishermen and family paddlers that wish to access this popular portion of the river, from either Algonkian or Seneca Regional Parks located on the Virginia side, as well as the Riley's and Violette's Locks access points on the Maryland side. The Coast Guard appreciates all of the commenters who took time to provide feedback on this security zone. Through the review of the comments, the Coast Guard learned more about how people use this busy stretch of the Potomac River.

One commenter requested to know whether activating this zone would affect bikers and hikers on the C&O Canal towpath, which follows along the Maryland shoreline. This zone covers navigable waters of the Potomac River, shoreline to shoreline; it does not extend shoreward and will not affect bikers and hikers on the C&O towpath.

*2. Did the Coast Guard need to publish a notice of proposed rulemaking before publishing the July 2017 Interim Final Rule?*

We received comments stating that the Coast Guard did not have the authority to issue the July 2017 IFR without prior notice and comment. As discussed in the July 2017 IFR, section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)) allows 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. The Coast Guard found that good cause existed for not publishing an NPRM and discussed those findings in the IFR. The Coast Guard found that issuing an NPRM was impracticable and contrary to the public interest because immediate action was necessary to provide waterway and waterside security and protection. If the Coast Guard waited the requisite 30 days for public comment, this would have put USSS protectees at the Trump National Golf Club and the nearby public at risk. However, the Coast Guard recognizes the importance of public comment and allowed for a 30 day, post-effective comment period on the IFR.

*3. Will the Coast Guard extend the comment period on the interim final rule or hold a public meeting?*

We received two requests for extension of the comment period on the IFR and one request for a public meeting. The Coast Guard has made the decision not to extend the comment period on the July 2017 IFR. The Administrative Procedure Act does not specify the number of days that an agency must provide for public comment. And, based on the number and quality of the responses that we received, we believe that the 30-day comment period provided adequate opportunity for interested members of the public to review the July 2017 IFR and provide us with currently available information that would enhance our knowledge about the rule, including impacts. The Coast Guard carefully reviewed each of the comments we received on the July 2017 IFR and has addressed those concerns in this second interim final rule. But, to ensure that all concerns of the public have been brought to our attention, the Coast Guard is providing for a 90-day public comment period with this second interim rule. The Coast Guard believes this provides sufficient opportunity for public feedback without the need for public meetings.

*4. Do the size or location of the zone need to be adjusted?*

A number of comments questioned the size and location of the security zone. Many commenters stated that the security zone needlessly interfered with the public's access to the river. Commenters suggested that the Coast Guard could reduce the size of the zone while still maintaining security. Local paddling clubs, people associated with the camps, and recreational kayakers requested we find a way to share the river when the security zone is being enforced. A common theme was requesting a way for paddlers to enter the water on the Maryland side and access the GW Canal on the Virginia side. Many commenters felt that the zone could potentially force waterway users close to the dam. The president of a local recreational boating association asked for a 100-foot lane immediately west of Seneca Breaks, so that paddlers can safely cross upriver from the dam, as well as access to the Maryland side of the river. Additionally, some comments expressed concern over what would happen if a paddler launched and went downriver, only to find out upon return to that launch site that the security zone was activated. Commenters stated that this would leave a paddler stranded if the paddler could not access the paddler's launch point and could pose a safety risk to the paddler.

After reviewing the concerns raised by the commenters, we revised the security zone to create a 250 yard wide transit lane parallel to the Maryland shoreline that may be accessed with permission from the COTP or designated representative. While this means waterway users accessing the Potomac River from Riley's Lock will immediately enter the security zone when entering the river, the transit lane provides the opportunity for them to access the Potomac River once granted permission from the COTP or the COTP's representative. We moved the eastern edge of the security zone approximately

600 yards west. This provides approximately 170 yards of clearance between Seneca Falls and the edge of the zone. This also means waterway users launching from Violette's Lock have almost 400 yards to travel before reaching the edge of the zone instead of entering the zone almost immediately as they enter the Potomac River. We moved the western edge of the zone approximately 500 yards east. This means waterway users launching from Algonkian Regional Park boat ramp may travel three quarters of a mile due east before reaching the western edge of the zone. These modifications, together, should allow waterway users to launch from three nearby launch sites (Algonkian Park, Riley's Lock, and Violette's Lock), transit through the security zone on the Maryland side to access Seneca Falls and the George Washington Canal, and then return to their launch site.

We received comments about the size of this security zone as compared to other zones in the area that provide protective measures. Many commenters said that this security zone was much larger and more restrictive than those other zones. The list of zones referenced by commenters includes: Ronald Reagan Washington National Airport, White House "campaign style rallies," Camp David, Dahlgren Naval Surface Warfare Center, and naval vessels. Of these, the Coast Guard is not the issuing authority for zones that implement security measures around Ronald Reagan Washington National Airport, the White House, Camp David, or Dahlgren Naval Surface Warfare Center. The Coast Guard has issued temporary security zones for high profile events adjacent to waters of the United States, like the Democratic and Republican National Conventions. The Coast Guard designed each of these zone's size and restrictions based on the unique factors each venue presented. Regarding naval vessels, the Coast Guard issues Naval

Vessel Protective Zones considering both Coast Guard and naval vessel capabilities. There are other Coast Guard-issued security zones on different portions of the Potomac River, which vary in size, duration, and restrictions based on the unique factors each location and event presents (33 CFR 165.508). While all of these comments bring up other locations and circumstances where security can be an issue, they do not address the specific technical security needs for protecting USSS protectees on this particular waterfront property. The Coast Guard did not make any changes to the zone's size following its analysis of other security zones near this location.

One comment asked about why the Coast Guard is setting up a shore-to-shore security zone when, previously, USSS was only keeping boaters away from the shore. The temporary rules issued prior to the July 2017 IFR established shore-to-shore security zones which allowed the public to request permission to transit from the COTP's representative. The July 2017 IFR also provided the opportunity to request permission to enter and transit the zone in paragraph (c)(2).

*5. Does the security zone make the public less safe?*

Some commenters believed the zone would decrease the public's safety. While many of the comments were general in nature and did not provide specifics, some stated that they felt unsafe because of fear that the eastern edge of the security zone forced waterway users into Seneca Falls. One commenter suggested that the Coast Guard provide a 300-foot wide corridor parallel to the falls.

The security zone does not negatively impact public safety. The Coast Guard's establishment of the security zone allows enforcing agencies more time to respond to threats and take the lowest level of enforcement needed to protect USSS protectees. As

previously discussed in the “size and location” section above, in an abundance of caution, the Coast Guard is moving the zone’s eastern edge 500 yards west to provide ample room for waterway users to launch from Violette’s Lock and cross from the Maryland side to the Virginia side of the river. But, the Coast Guard does not believe that the original coordinates of the safety zone put the public at risk. Under the original IFR people could transit the zone parallel to the falls, provided they first received permission from the COTP or the COTP’s representative and followed transit instructions.

*6. Is a security zone needed?*

Many comments questioned whether there was a need for the security zone given that this segment of the river is almost exclusively used by kayaks, canoes, and paddleboards. Commenters stated the rocky, shallow bottom, debris, and ever changing water conditions would make it very difficult for someone unfamiliar with the area to approach the golf course at a high rate of speed without being overtaken or neutralized. Several comments suggested that the riverfront cliff in front of the Trump National Golf Club could be easily protected with security personnel on the shoreline due to its height. Others commented that there is a clear line of sight across the Potomac River, and that a Coast Guard security zone does not add to the security of the area since USSS protectees will be in plain sight of the opposite bank with or without the security zone.

The Coast Guard has authority to take action on the river and, in consultation with USSS, has deemed a security zone the most effective way to control access to the shores of the Trump National Golf Club. The Coast Guard recognizes that anyone can use any waterborne vessel, including paddle craft, to operate with malicious intent against USSS protectees. Therefore, the agency has concluded the security zone is necessary. To

accommodate waterway users, the Coast Guard is adding a transit lane that allows use of this segment of the river while the Coast Guard, along with the USSS, maintains appropriate levels of security.

*7. Has the Coast Guard considered alternatives?*

Several commenters requested that the Coast Guard consider alternatives to rulemaking.

*Physical barriers.* Some non-Coast Guard alternatives proposed by commenters included having the Trump National Golf Club establish visible barriers on shore to provide security or replant vegetation along the shoreline to provide a barrier. Another commenter suggested the Coast Guard put up physical barriers to provide security. The Coast Guard cannot require land owners to alter their property as an alternative to creating and enforcing a security zone. Such alterations would need to be at the landowner's discretion. And, providing physical barriers is not a method the Coast Guard uses to mitigate ports and waterways security concerns.

*Land-based security.* One commenter suggested having land-based security on the golf course, either private security or federal law enforcement. The USSS in consultation with the Coast Guard has determined that waterborne security is required when USSS protectees are present at Trump National Golf Club.

*Skipping holes.* Other commenters suggested that USS protectees skip the golf holes that are closest to the river's edge. The Coast Guard does not direct movements of USSS protectees on the golf course.

*Random searches.* One commenter requested that instead of a security zone, the Coast Guard patrol and conduct random searches. Random searches would not provide an adequate level of security that is required for these events.

*Assistance from community members.* One comment requested that the Coast Guard develop a partnership with the local paddling community and request assistance from paddlers in securing the waterway. Only the Coast Guard has authority to enforce a security zone.

*Inspections.* One comment asked if the Coast Guard could conduct security inspections at “popular launch sites” instead, and also provide a permit or pass that allows that paddler to use that segment of the river. Such an inspection process does not currently exist, and if implemented, would not account for paddlers already on this segment of the river. The COTP, in consultation with the USSS, has determined that a security zone is the most effective means to mitigate security concerns at the Trump National Golf Club.

*8. Has the Coast Guard considered only applying the security zone to specific people or vessels?*

There were numerous comments requesting that the security zone not apply to human powered kayaks, canoes, or paddleboards, and only to motorized watercraft. Commenters argued that paddle craft are slow, easily tracked, and easily overtaken for security boardings. Other commenters requested that the security zone only apply to vessels above a certain speed, allowing kayaks and canoes to operate without restriction. A few proposals requested that permits be available to provide ongoing exemptions to

future security zones. These permits would apply to local businesses and groups that are deemed not threatening and rely heavily on this particular segment of the river.

These recommendations would undermine the security measures this rule intends to provide. An exemption for paddle craft would allow persons with harmful intent immediate access to the Trump National Golf Club shoreline while USSS protectees were present. Organizations exempted by permit could be exploited, similarly allowing persons with harmful intent access to the shoreline. Instead, the Coast Guard will continue maintaining a shoreline-to-shoreline security zone activated when USSS protectees are present and will continue to allow vessels to use the transit lane as conditions permit. This helps the Coast Guard manage waterborne security risk by maintaining positive control of entry into the zone and keeping a minimum stand-off distance from the Virginia shoreline for all vessels.

*9. Does the Coast Guard have authority to create a security zone in Maryland state waters?*

Many comments questioned the Coast Guard's authority to establish a security zone in Maryland State waters. The Coast Guard's legal authority to establish security zone regulations comes from 33 U.S.C.1221. A discussion of the geographic application of security zones is provided in regulation in 33 CFR 165.9(c), and explains that security zones may be established in "waters subject to the jurisdiction of the United States," defined in 33 CFR 2.38. This definition incorporates "navigable waters of the United States" as defined in 33 CFR 2.36, which are further described to include: (1) territorial seas of the United States; (2) internal waters of the United States that are subject to tidal influence; and (3) internal waters not subject to tidal influence that: are or have been

used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce. This portion of the Potomac River is a navigable waterway of the United States and meets the definition described in 33 CFR 2.36(a)(3)(i). Because this portion of the river is a navigable waterway, the Coast Guard has authority stemming from 33 U.S.C. 1221 to issue a security zone on these waters.

*10. For whom will the security zone be activated?*

The July 2017 IFR said that the safety zone was for the protection of “high ranking government officials.” Several comments requested clarification about who is considered a “high ranking government official.” Commenters were concerned about the frequency of enforcement if “high ranking government officials” covered a very large group of individuals. Some commenters wanted the security zone to be activated only for the President of the United States, while others thought the zone should be able to be activated only for the Vice President of the United States, Speaker of the House, and other members of Congress in addition to the President. Many commenters were concerned that President Trump’s business partners or other non-governmental persons would trigger the security zone’s activation.

The Coast Guard will only activate the security zone when requested by the USSS for the protection of those who qualify for USSS protection. The list of personnel who qualify for USSS protection is found in 18 U.S.C 3056(a). This list includes the President of the United States, Vice President of the United States, President-elect and Vice President-elect, immediate families of those individuals, former Presidents and Vice Presidents, major United States Presidential candidates, and visiting heads of state or

foreign governments. The Coast Guard has amended the regulatory text to clarify this for the public.

*11. Can the Coast Guard close a public waterway for private recreational activities?*

Many commenters argued that the right of USSS protectees to use private land for recreational activities does not take precedence over the right of taxpayers to use publicly owned land and waterways. Comments stated that a golf course for USSS protectees would limit a wide range of rehabilitative, recreational, educational and conservation activities for many citizens and stakeholders. Other comments expressed frustration that the interests and activities of the public were not taken in to consideration when the location and size of the security zone was established. Comments pointed out that there are few areas on the Potomac River that offer such varied public access and usage opportunities as the area initially covered by the security zone, and that there are other options for USSS protectees to play golf.

The Coast Guard cannot change the location and travel choices of USSS protectees. The USSS is tasked with providing the highest level of security for certain individuals, and has requested the Coast Guard's assistance in this location. The need for and level of security does not change based on the activities of protected individuals. Shortening the size of the security zone and adding the transit lane along the Maryland shore provides an opportunity for the public to enjoy the river while USSS protectees participate safely in their chosen activities.

Many commenters stated that taxpayer money should not be used to obtain security services for a private business or to engage in activities that would unfairly

benefit a private entity. The security zone is not intended to support a private business. It will only be activated as needed to protect USSS protectees, not the Trump National Golf Club generally.

*12. How long will the security zone be in effect?*

Many commenters requested clarification on how long the security zone would be in effect, including whether the security zone would be terminated after the current President's term. After reviewing any comments received on this second IFR, the Coast Guard will issue a final rule addressing any new comments that we receive during the comment period. The security zone will remain in place until the Coast Guard conducts a future rulemaking to withdraw it. But, the security zone will only be enforced at the request of USSS.

*13. How frequently and for how long will the security zone be enforced when activated?*

Many commenters requested clarification about how frequently the zone would be activated and the length of enforcement. Several comments asked about whether the security zone could ever be enforced for a multi-day event. Additionally, other comments asked if the security zone could be activated only when recreational river users were less likely to be present, such as from Monday through Friday. One commenter requested that the security zone be activated no more than 3 times each year.

The Coast Guard will activate this security zone in consultation with the USSS whenever deemed needed to protect USSS protectees. There is a possibility that the security zone could be enforced multiple days at a time. But, to date, the USSS has not requested multi-day enforcement.

*14. Who enforces the security zone?*

Many comments indicated confusion over how and by whom the security zone would be enforced. Some stated that the MD-DNR has enforcement jurisdiction over the security zone and would be able to make changes to the size of the security zone. This is not correct. While the CG may be assisted by Federal, State, and local law enforcement agencies in the patrol and enforcement of the security zone, only the CG is authorized to establish or modify the size of the zone. MD-DNR is a vital partner, present while the zone is being enforced. Currently, the Coast Guard partners with MD-DNR, placing Coast Guard personnel on MD-DNR vessels to provide on-scene enforcement capabilities.

*15. How will the public know when the zone is going to be enforced?*

Many comments requested advance notice of when the security zone is going to be enforced. Specific suggestions included advance notice durations of two weeks, two days, and twenty-four hours. Several other comments requested a website, application development, or text notification. Many comments requested signs be posted at popular launch sites, indicating in advance that the security zone is activated. Some requested a dedicated telephone line with a pre-recorded message. Some comments asked if local paddling clubs could be notified when the security zone is activated.

The Coast Guard can only provide minimal advance notice of activation. Announcing the arrival of USSS protectees, even twenty-four hours in advance, would put their security at risk. The USSS will request enforcement of the security zone when required. The Coast Guard will provide the public with notice of enforcement of the security zone by Broadcast Notice to Mariners (BNM), updated information at

[www.news.uscg.mil/Baltimore/](http://www.news.uscg.mil/Baltimore/) and by a recorded message at telephone number (410) 576-2675. Local businesses, recreational boaters, and recreational associations should check the website and phone message prior to making plans that may be impacted by enforcement of the security zone, but should keep in mind that enforcement could begin at any time at the request of USSS. The Coast Guard does not intend to use shore-based signage as a means to notify the public of security zone enforcement.

It was of great concern to many commenters that they would not know when the security zone was activated, particularly if the only means of communication is by means of Marine Band Radio, VHF-FM. And, some comments stated that paddlers do not carry cellular telephones on the river. For river users who do not carry a Marine Band Radio, a telephone, or have other means of access to the internet while on the river, the COTP or designated representative will be on scene to provide notification. At the time of enforcement, the Coast Guard will provide instructions to persons and vessels in the security zone on how to depart the zone. Vessels may request permission to remain in the zone from the COTP or designated representative.

Commenters asked if the use of installed air horns, loud hailers, flags or special lights at the Trump National Golf Club could be used to indicate when the security zone is activated. The designated representative of the COTP on scene will decide on the most appropriate and feasible method of communication; however, the Coast Guard cannot require land owners to alter their private property. Commenters also asked about paddlers with hearing impairments and those speaking different languages. The Coast Guard will use visual signals or other alternative means of non-verbal communication as needed for these paddlers. A designated representative of the COTP on scene will ensure

that all vessels and people within the security zone recognize that the security zone is activated, and that they must either immediately depart the security zone or transit through it in accordance with directions from the COTP or designated representative. It was also requested that temporary buoys be established to mark a transit lane. The Coast Guard does not intend to use buoys, however, the COTP's designated representative on scene will inform waterway users how to proceed while within the security zone.

*16. Does this security zone impact First Amendment rights?*

Some commenters argued that the security zone impacts First Amendment rights, specifically freedom to assemble and freedom of speech. Many commenters felt that the security zone was not promulgated to keep USSS protectees secure, but to keep protestors away from the Trump National Golf Club. The commenters stated that the Potomac River was a public forum and that kayakers had a right to peaceably assemble there and petition the Government.

The Coast Guard agrees that First Amendment considerations must be evaluated during the rulemaking process. The Coast Guard believes that this zone is narrowly tailored and minimizes intrusion into the rights of protestors while providing necessary security measures for USSS protectees. As stated in the "Protest Activities" section of the Regulatory Analysis portion of both the July 2017 IFR and this current action, the Coast Guard respects the First Amendment rights of protestors. 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.

*17. Does the security zone result in the taking of private property?*

We received some comments arguing that the security zone violates the Fifth Amendment. Specifically, comments argued that the Coast Guard was taking private property because the security zone overlaps part of Sharpshin Island, which is owned by the Potomac Conservancy. This would not amount to a regulatory taking because the Coast Guard's actions did not permanently diminish the value of the property, did not physically invade the property and did not permanently eliminate the economic value of the property. However, this second interim rule shortens the area of the security zone, so that the island is not located within the security zone.

*18. What are the economic impacts on local businesses and waterway uses?*

Commenters raised concerns about possible economic impact of the security zone on local businesses and waterway users. Commenters stated that the many different waterway users contribute significantly to the local economy--local retailers, restaurants and river related businesses depend on these patrons. Comments also stated that the Coast Guard is privileging a private business, the Trump National Golf Club, by allowing for their financial gain while closing the river to many smaller businesses and organizations that could also make a profit off tourists and the public. There was significant concern in many comments that without advanced notice of the security zone, paddlers and other vessel operators would undergo a financial burden after traveling to their planned destination only to find that the river is closed. Changing plans last minute would cost time, fuel, and possibly other incidentals while groups or individuals assess and analyze options and then travel to other kayaking locations. Commenters stated several times that there are no other local kayaking spots that offer such diverse opportunities for many different levels of paddlers. Whitewater race coordinators were

also concerned that there would be a significant economic impact if a planned event has to be cancelled or rescheduled because of activation of the security zone. Comments stated that lack of advance notice precludes river-related businesses from making alternative arrangements for sailing classes, kayak lessons, planned group outings, or major events.

The Coast Guard views this current security zone rulemaking as distinct from other existing or potential protective security regulations at other locations. The shortening of the security zone and the addition of the transit lane is intended to allow for many of the above mentioned river related activities to continue even when the security zone is activated. In other words it was designed to minimize to the extent possible, the impact on commerce and legitimate waterway use. The security zone does not negatively impact public safety. More importantly the Coast Guard's establishment of the security zone allows enforcing agencies more time to respond to threats and take the lowest level of enforcement needed to protect USSS protectees. Ultimately the Coast Guard deems the benefits and need for this security zone to provide protection the pertinent protectees to exceed the indirect impacts on the entities the commenters noted.

One comment also specified that use of the Trump National Golf Club Bedminster in Bedminster, New Jersey, has damaged the local economy, because in that situation, hot air balloons and small airports have to cancel reservations when the President and other high level government officials use the golf course. The Coast Guard views this current security zone rulemaking as distinct from other existing or potential protective security regulations at other locations or by other agencies; economic impacts are considered on a case-by-case basis.

Another comment stated that the security zone would limit access to Camp Calleva's private property. The shortening of the security zone and the addition of the transit lane is intended to allow for many of the above mentioned river related activities to continue even when the security zone is activated. These modifications are intended to reduce the economic impact that the security zone will have on river-based businesses, local residents, and paddlers coming to this segment of the Potomac River.

*19. What are the impacts to small entities?*

Many small entities have already been mentioned, but this section addresses more specific concerns relating to the security zone's impact on them. The Director of Camp Calleva gave detailed comments addressing the camp's status as a 501(c)(3) educational non-profit organization that provide summer camp, field trips, and other programming for youth and adults in the area. The director stated that if the camp could not obtain access to the river at Riley's Lock, there would be a daily economic impact of \$14,000 Monday-Friday for each cancelled day of children's camps and \$2,800 on Sunday for other classes offered. It was also stated that there are many difficulties associated with moving the camp's operations, because of the amount of equipment and watercraft. Also, retraining the employees for different activities or areas, as well as learning new outdoor skills in order to change programming, would be difficult and cost time and money. One comment noted that most day camps are only 5 days long, so if a child misses one day on the water during a paddling camp, they will be missing 20% of what they paid for and camp staff would have to fill these days with alternate activities. Using the new transit lane, camp operations may continue within 250 yards of the Maryland shore when the security zone is activated, pending permission from the COTP's designated

representative. Comments mentioned transportation to Calleva Camp at Riley's Lock location from the Virginia side includes a canoe trip from the Trump National Golf Club for some attendees and that if the security zone goes into effect, children using this mode of transportation would have to find another route to camp. This is true. Persons intending to travel to Camp Calleva from a canoe that departs from Trump National Golf Club will have to commute to camp through another means when the security zone is activated. At the time of this publication, the Calleva Camp website states that they provide bus transportation to camp at Riley's Lock from 17 locations, including one in McLean, VA, which is roughly 25 minutes from Trump National Golf Club.

Another small entity that would be effected by the security zone is Valley Mill Camp that operates on a lake and 60 acres of forested land in Germantown, MD. Valley Mill also offers canoeing and kayaking programs on the Potomac River. According to their website, river trips leave camp daily and access the Potomac from the Maryland side. Valley Mill's paddling programs will be able to use the security zone's transit lane pending permission from the COTP's representative. Another small entity that commented about the security zone's impact was Swift water Rescue Instructors. They state that volunteer instructors access the Potomac through either Riley's or Violette's Locks, and cross the Potomac just upriver from the Seneca Breaks with their students to access the old Patowmack Canal, where there is a historic set of rapids ideal for training all levels of paddlers in rescue methods. The transit lane and shortened security zone will allow Swift water Rescue Operations to continue, even when the security zone is activated, pending permission from the COTP's representative.

Another small entity, sailing instructors, stated that they conduct lessons on this

segment of the river and that closing the river entirely would put them out of business.

Using the transit lane will allow for sailing lessons to continue across from Trump National Golf Club with permission from the COTP's designated representative when the security zone is activated.

Finally, the Program Manager at Riverbend Park, a Fairfax County Park Authority Park in Great Falls, VA, commented that they use Algonkian Regional Park, on the Virginia side upstream from Trump National Golf Club, as a launch site for an 8-mile paddling trip back to Riverbend Park. The shortened security zone and transit lane on the Maryland side of the river would allow paddlers that enter at Algonkian Regional Park to cross the Potomac from the Virginia side when the security zone is activated and access the transit lane on the Maryland side of the river, pending permission from the COTP's representative. Then paddlers could cross back to the Virginia side near Seneca Breaks to continue the trip back to Riverbend Park.

In conclusion, the Coast Guard has reduced the length of the security zone on the Potomac River, and added in a transit lane in order to accommodate the above small entities and their operations that depend heavily on access to the Potomac River.

*20. Was there an error in the original coordinates?*

Some comments pointed out that the original coordinates submitted for the corners of the security zone were incorrect. The Coast Guard agrees that the latitude was erroneously entered as degrees West, instead of degrees North. This second interim rule makes that correction.

*21. Does the Coast Guard have to display firearms?*

One commenter recommended against law enforcement agencies displaying firearms as to not alarm the many children that operate in this part of the river. The Coast Guard appreciates this comment's concern and will operate as agency policy and security needs dictate.

*22. What if signs were placed in the river?*

One commenter stated that if structures would be erected on the Potomac River pursuant to demarking or providing other information about the security zone, then U.S. Army Corps of Engineers should be consulted to conduct Section 10 Clean Water Act review. Currently, there is no intention of installing fixed structures. If such structures are deemed necessary in the future, the Coast Guard would follow its processes for establishing aids to navigation.

*23. Is the Coast Guard complying with Executive Order 13771?*

One commenter asked which two regulations were being removed to add this one. Per Executive Order 13771 of January 30, 2017, "Reducing Regulation and Controlling Regulatory Costs" agencies should identify two regulations to be eliminated for every new one issued. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process." The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive

Order 13771. See the OMB Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

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

In the first interim rule, the security zone included all navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the east by a line connecting the following points: latitude 39°04'02" W., longitude 077°19'48" W., thence south to latitude 39°03'39" W., longitude 077°20'02" W., and bounded on the west by longitude 077°22'06" W., located between Pond Island and Sharpshin Island, in Montgomery County, MD. This second interim rule amends the security zone at 33 CFR 165.557 to include all navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the west by a line connecting the following points: latitude 39°03'44.7" N., longitude 077°21'47" W., thence north to latitude 39°04'03" N., longitude 077°21'47" W., and bounded on the east by a line connecting the following points: latitude 39°04'04" N., longitude 077°19'58" W., thence south to latitude 39°03'41.35" N., longitude 077°20'05.30" W. Although the length of the security zone is decreased at both the eastern and western ends, creating a waterside area for recreational egress and access, the width of the security zone is unchanged, remaining from shoreline to shoreline. This rule provides additional information about an area within the security zone along the Maryland shoreline, designated the “Transit lane,” including a definition and the restrictions that apply within the lane to waterway users. However, permission for waterways users to operate within this lane will be determined by the COTP, or designated representative. The public can learn the status of the security zone via an

information release for the public via website [www.news.uscg.mil/Baltimore/](http://www.news.uscg.mil/Baltimore/) and a recorded message at telephone number (410) 576-2675

Entry into the security zone is prohibited, unless public use of the transit lane is specifically authorized by the COTP Maryland-National Capital Region or a designated representative. Except for public vessels, this rule will require all vessels in the designated security zone to immediately depart the security zone. Federal, State, and local agencies may assist the Coast Guard in the enforcement of this rule. The duration of the zone is intended to ensure the security of USSS protectees while at Trump National Golf Club. The COTP Maryland-National Capital Region will notify waterway users and the boating community of the security zone, via Broadcast Notice to Mariners (BNM), an information release at the website: [www.news.uscg.mil/Baltimore/](http://www.news.uscg.mil/Baltimore/) and a recorded message at telephone number (410) 576-2675.

## **V. Regulatory Analyses**

Coast Guard developed this interim final rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below Coast Guard summarizes its analyses based on a number of these statutes and E.O.s.

### **A. Regulatory Planning and Review**

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. This rule is considered to be an Executive Order 13771 non-significant regulatory action. See OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). A regulatory evaluation follows.

A combined regulatory evaluation and Regulatory Flexibility Analysis follows and provides an evaluation of the economic impacts associated with this rule. In this interim final rule, USCG revised the security zone to include a dedicated transit lane. The public can move through the area using the dedicated transit lane during the enforcement of the security zone, with permission from the COTP or COTP’s designated representative as proscribed by the interim final rule. This interim final rule also includes changes to the geographic boundaries of the security zone from the boundaries in the interim final rule of July 10, 2017. The following table provides a summary of the rule’s costs and qualitative benefits.

Table 1: Summary of the Rule's Impacts

Category	Summary
Potentially Affected Population	Operators and attendees of summer camps; operators of kayak and watercraft instruction schools; recreational boaters including canoeists, kayakers and, stand up paddle boarders (SUPs); fishermen; waterfowl hunters; <sup>1</sup> nonprofit organizations; exercisers, as well as federal agencies such as Coast Guard and the Secret Service. The rule also may indirectly impact some federal agencies. State <sup>2</sup> and local law enforcement and recreational/park authorities in the area may have interests.
Costs/Cost Savings	* Does not impose additional direct costs on the public or to the USCG * Reduces impacts or creates leisure time savings on entities impacted by the 2017 IFR
Unquantified Benefits	* Reinforces an established Presidential Security Zone. * Helps secure area to meet objectives of the USSS

*Affected Population*

Data is not collected by USCG on the vessels and individuals that use this area of the Potomac River. Based on comments to the Coast Guard's original interim final rule (dated July 10, 2017), USCG estimates that this rule affects recreational boaters including kayakers, personal water crafts (PWCs) operators<sup>3</sup>, stand up paddle boarders (SUPs); persons using the area for exercise activities; fishermen; commercial vessel operators; and political protesters. This interim final rule impacts the Coast Guard and the U.S. Secret Service (USSS) directly; other Federal governmental agencies may be impacted indirectly by this rulemaking. No governmental jurisdictions at the State, Tribal or municipal level will be impacted directly by this interim final rule

<sup>1</sup> Based on public comments, USCG has developed this list of parties in the potentially affected population; these may be groups that are affected either directly or indirectly. Please see comments including USCG-2017-0448-0036, USCG-2017-0448-0026, USCG-2017-0448-0163USCG-2017-0448-0453, USCG-2017-0448-0481, USCG-2017-0448-0330, USCG-2017-0448-0332, USCG-2017-0448-0385, USCG-2017-0448-0335, USCG-2017-0448-0479 USCG-2017-0448-0537, USCG-2017-0448-0541, USCG-2017-0448-0579 and USCG-2017-0448-0079.

<sup>2</sup> The Potomac River falls in the State of Maryland. Maryland law enforcement personnel and vessels (<http://dnr.maryland.gov/nrp/Pages/default.aspx>) of the Maryland Natural Resources Police (MNRP) have participated in past security zone enforcements. A CG officer will deploy on a MNRP boat during an enforcement.

<sup>3</sup> Predominately this includes jet ski users

Exact numbers are not available, but the Coast Guard estimates the total size of the population affected by this interim final rule to be in the hundreds. USCG attempted to collect further data by using USGS's<sup>4</sup> satellite technology. The technology was not accurate enough to do a count of individuals such as swimmers or inner tube users. Likewise, the technology was not precise enough to do a count of a vessel as small as a kayak or SUP. The comments suggested these counts ranged from "a dozen" to "thousands." The most often cited of these estimates was "hundreds."

USCG also sought an estimate from its personnel who manage the enforcements of the security zone. Data are not collected normally by USCG on the number of vessels and individuals that use this area. But, USCG onsite personnel estimate of up to six recreational vessels and up to 25 kayakers transiting during the enforcement of the security zone.

## **Costs**

This interim final rule modifies the existing security zone established by the IFR, "Security Zone; Potomac River, Montgomery County, MD" on July 10, 2017 (82 FR 31719). The security zone covers waters of the Potomac River next to Trump National Golf Club at Potomac Falls, VA, and prevents waterside threats and incidents while persons protected by the Secret Service are at the club. The modification due to this interim final rule reduces the overall length of the existing security zone and formalizes a 250-yard-wide transit lane that provides passage for vessels through the zone near the Maryland shoreline with permission of the COTP or designated representative. It continues to prohibit vessels and people from entering the security zone unless

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<sup>4</sup> U.S. Geological Survey maintains a repository of archived and live satellite imagery. USCG had contact with U.S. Geological Survey's Science Information Services via email in June 2018 on this issue.

specifically exempt under the provisions in this rule or granted specific permission from the COTP Maryland-National Capital Region or designated representative. This interim final rule also governs activities of vessels and persons already in the security zone when activated. The modification of this rule will not require any entity to take action beyond what was already required under the 2017 interim final rule. As a result, this interim final rule does not impose additional direct costs on the public or to the USCG. A description of the purpose of the rule's provisions follows.

Section 165.557(a) establishes the definitions to be used to understand the provisions of the regulations. These definitions do not add direct cost to the public or Government. The definition of vessel establishes the applicability of these regulations on a multitude of watercraft including but not limited to kayaks, stand up paddleboards and inner tubes. Therefore, users of these types of vessels would be applicable to the provisions of the interim final rule.

Section 165.557(b) describes where the security zone is located. The location of the security zone does not cause costs to be incurred by the public nor the Government. In §165.557(b), this interim final rule establishes where the Potomac River security zone is and, thereby, declares that area to be a security zone which is defined by the regulations. Actions that are necessitated when a security zone is declared are specified in existing regulations. Under 33 CFR 165.7(a), when the establishment of these limited access areas occurs, notification may be made by marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, and on-scene oral notice, as well as publication in the Federal Register. These requirements are akin to but in addition to the authorization requirements specified in this interim final rule; under §

165.557(c)(1), entry into or remaining in the security zone is prohibited unless authorized by the COTP or a designated representative in consultation with the USSS when the security zone is being enforced. Section 165.557(d) requires that the COTP provide notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), information release at the website and pre-recorded message at telephone number as well as on-scene notice.

Although this interim final rule does result in actions being taken by the Coast Guard and USSS directly it does not result in any new costs or burdens. The impact that this interim final rule will have on these two federal agencies is considered part of their mission and responsibility, and thus part of their current responsibilities to the public and other Federal entities.

### **Benefits**

Upon request by the USSS to close down this section of the river to ensure the safety of individuals under USSS protection, USCG created a security zone in certain waters of the Potomac River adjacent to Trump National Golf Course Club at Potomac Falls, Virginia. This security zone is necessary to prevent waterside threats and incidents for events held at Trump National Golf Clubhouse when persons protected by the USSS are at the club.

### *Regulatory Alternatives Considered*

Within the agency's consideration, alternatives to the regulatory action were considered to determine if any alternative could accomplish the stated objectives of applicable statutes and could minimize any significant economic impact on small entities. In developing this rule, the Coast Guard considered the following alternatives:

(1) Issue a rulemaking that would not require any vessel to get permission from the Coast Guard prior to entering the transit lane, with or without changes to the zone's boundaries described in the July 10, 2017, interim final rule.

(2) Issue a rulemaking that would not require human-powered vessels to get permission from the Coast Guard prior to entering the transit lane, with or without changes to the zone's boundaries described in the July 10, 2017, interim final rule.

(3) Keep boundaries as noted in the July 10, 2017, interim final rule.

Alternative 1: Issue a rulemaking that would not require any vessel to get permission from the Coast Guard prior to entering the transit lane, with or without changes to the zone's boundaries described in the July 10, 2017, interim final rule.

The Coast Guard considered issuing a rulemaking that did not require any vessel to get permission from the COTP or the designated representative prior to entering the transit lane. But, we rejected this option because this approach would undermine the security measures this rule intends to provide. This option would allow persons with harmful intent immediate access to the Trump National Golf Club shoreline while USSS protectees were present. Instead, the Coast Guard chose to continue to allow vessels to use the transit lane as conditions permit with approval from the COTP or designated representative. This helps the Coast Guard manage waterborne security risk by maintaining positive control of entry into the zone and keeping a minimum stand-off distance from the Virginia shoreline for all vessels.

Alternative 2: Issue a rulemaking that would not require human-powered vessels to get permission from the Coast Guard prior to entering the transit lane, with or without changes to the zone's boundaries described in the July 10, 2017, interim final rule.

The Coast Guard considered amending the security zone to require only powered vessels to get permission from the COTP or the designated representative prior to entering the transit lane. Under this option human-powered vessels such as kayaks, canoes, and paddleboards would not need permission from the COTP or designated representative before entering the transit lane. We rejected this option because this approach would undermine the security measures this rule intends to provide. An exemption for paddle craft would allow persons with harmful intent immediate access to the Trump National Golf Club shoreline while USSS protectees were present. Instead, the Coast Guard will continue maintaining a shoreline-to-shoreline security zone activated when USSS protectees are present and will continue to allow vessels to use the transit lane as conditions permit. This helps the Coast Guard manage waterborne security risk by maintaining positive control of entry into the zone and keeping a minimum stand-off distance from the Virginia shoreline for all vessels.

Alternative 3: Keep boundaries as noted in the July 10, 2017, interim final rule.

For this alternative USCG considered releasing a rule which would use the boundaries as promulgated in the interim final rule of July 10, 2017. The boundaries of the previous interim final rule are wider than the boundaries of this interim final rule. This alternative would exclude a provision which was favored by the public<sup>5</sup> and is part of the preferred alternative (e.g., this interim final rule). The alternative would continue the status quo from the 2017 interim final rule. It also would also have higher costs for the public as the opportunity costs of lost leisure time would magnify. This alternative

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<sup>5</sup> Commenters (USCG-2017-0448-0059, USCG-2017-0448-0038, USCG-2017-0448-0008, USCG-2017-0448-0067, USCG-2017-0448-0050, USCG-2017-0448-0144 ,USCG-2017-0448-0099, USCG-2017-0448-0104, USCG-2017-0448-0172, USCG-2017-0448-0183) supported a transit lane; albeit it may have not been referred to as such in their comments.

does not provide any increased security over the preferred alternative of this interim final rule. For these reasons, USCG has chosen not to continue the status quo and continue with this alternative.

#### B. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we considered whether this interim final rule will have a significant economic impact on a substantial number of small entities. 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 fewer than 50,000 people.

As described in the "Regulatory Planning and Review" section, the Coast Guard expects this interim final rule to result no direct costs to any entities, including small entities. It does note that there are potential indirect costs from the July 2017 interim final rule, for some entities. The affected population for the indirect costs consists of private individuals who own recreational vessels or who engage in recreational activities in this area of the Potomac River, commercial entities and nonprofits which have activities or operate vessels in this area of the Potomac and governmental entities. The indirect costs are opportunity costs for loss leisure time to access to the restricted area of the Potomac River. Since indirect are not considered when determining the impacts on small entities for regulatory flexibility assessment purposes, this rulemaking will have no significant economic impact on any small entities. In actuality this interim final rule reduces the impact on entities from the 2017 interim final rule because it reduces the overall length of the existing security zone and creates a 250-yard-wide transit lane that

provides passage for vessels through the zone near the Maryland shoreline with permission of the Captain of the Port (COTP) or designated representative.

This interim final rule also indirectly may impact four governmental units<sup>6</sup> in two governmental jurisdictions; none are considered by RFA definitions to be small governmental jurisdictions. Thus, the compliance with this interim final rule does not represent a significant economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim final rule will not have a significant economic impact on a substantial number of small entities.

#### C. Collection of Information

This rule would 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between

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<sup>6</sup> Great Falls National Historic Park and the Chesapeake & Ohio Canal National Historic Park of the U.S. National Park Service of the U.S. Department of the Interior; Riverbend Park, Seneca Regional Park and Algonkian Golf Course of the Fairfax County Virginia Park Authority. The State legislators for District 20 of Maryland expressed comments about the 2017 interim final rule.

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.

#### 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 would 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 made a determination 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 the reduction in size of a security zone that prohibits entry on specified waters of the Potomac River during frequently occurring heightened security events. It is categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Memorandum for Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under ADDRESSES.

### 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.

### **VI. Public Participation and Request for Comments**

Although this interim rule is effective upon publication, we are seeking further public comment on it. We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number USCG-2017-0448 for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this rule as being available in the docket, and all public

comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **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; 46 U.S.C. 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.557 to read as follows:

#### **§ 165.557 Security Zone; Potomac River, Montgomery County, MD.**

- (a) *Definitions.* As used in this section:

*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his or her behalf.

*Designated representative* means a Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to enforce the security zone described in paragraph (b)(1) of this section.

*Public vessel* has the same meaning as that term is defined under 46 U.S.C. 2101.

(b) *Location.* Coordinates used in this section are based on datum NAD 83.

(1) *Security zone.* The following area is a security zone: all navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the west by a line connecting the following points: latitude 39°03'44.7" N., longitude 077°21'47" W., thence north to latitude 39°04'03" N., longitude 077°21'47" W., and bounded on the east by a line connecting the following points: latitude 39°04'04" N., longitude 077°19'58" W., thence south to latitude 39°03'41.35" N., longitude 077°20'05.30" W.

(2) *Transit lane.* All waters within the Potomac River, contiguous with the Maryland shoreline and extending out into the Potomac River approximately 250 yards, within an area bounded by a line connecting the following points: beginning at the Maryland shoreline at latitude 39°04'03" N., longitude 077°21'47" W., thence south to latitude 39°03'55.3" N., longitude 077°21'47" W., thence east to latitude 39°03'56.8" N., longitude 077°20'00.3" W., thence north to the Maryland shoreline at latitude 39°04'04" N., longitude 077°19'58" W, thence back along the shoreline to the originating point.

(c) *Regulations.* The general security zone regulations found in § 165.33 apply to the security zone created by this section.

(1) Except for public vessels, entry into or remaining in the security zone described in paragraph (b)(1) of this section is prohibited unless authorized by the COTP or designated representative when the aforementioned security zone is being enforced. At the start of each enforcement, all persons and vessels within the security zone must depart the zone immediately or obtain authorization from the COTP or designated representative to remain within the zone. All vessels authorized to remain in the zone shall proceed as directed by the COTP or designated representative.

(2) Persons and vessel operators who intend to enter or transit the security zone while the zone is being enforced must obtain authorization from the COTP or designated representative. Access to the zone will be determined by the COTP or designated representative on a case-by-case basis when the zone is enforced. Persons and vessel operators requesting permission to enter or transit the security zone may contact the COTP or designated representative at telephone number 410-576-2675, on marine band radio VHF-FM channel 16 (156.8 MHz), or by visually or verbally hailing the on-scene law enforcement vessel enforcing the zone. On-scene Coast Guard personnel enforcing this section can be contacted on marine band radio, VHF-FM channel 16 (156.8 MHz). The operator of a vessel shall proceed as directed upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light, or other means. When authorized by the COTP or designated representative to enter the security zone all persons and vessels must comply with the instructions of the COTP or designated representative and proceed at the minimum speed necessary to maintain a safe course while within the security zone.

(3) The transit lane, described in paragraph (b)(2) of this section, is the only part of the security zone through which persons and vessels may travel. Before entering the transit lane, persons or vessels must have authorization as described in paragraph (c)(2) of this section. All persons and vessels shall operate at bare steerage or no-wake speed while transiting through the lane, and must not loiter, stop, or anchor, unless authorized or otherwise instructed by the COTP or a designated representative.

(4) The U.S. Coast Guard may secure the entire security zone, including transit lane, if deemed necessary to address security threats or concerns.

(5) The U.S. Coast Guard may be assisted by Federal, State, and local law enforcement agencies in the patrol and enforcement of the security zone described in paragraph (b)(1) of this section.

(d) Enforcement. The Coast Guard activates the security zone when requested by the U.S. Secret Service for the protection of individuals who qualify for protection under 18 U.S.C 3056(a). The COTP will provide the public with notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), information release at the website: [www.news.uscg.mil/Baltimore/](http://www.news.uscg.mil/Baltimore/) and via a recorded message at telephone number (410) 576-2675 as well as on-scene notice by designated representative or other appropriate means in accordance with § 165.7.

Dated: March 18, 2019.

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
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