

security zone which will be intermittently enforced over the course of 3 days. It is categorically excluded from further review under paragraph L60[a] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

- 2. Add § 165.T05-0040 to read as follows:

#### § 165.T05-0040 Security Zone, Delaware River, Philadelphia, PA.

(a) *Location.* The following area is a security zone: All waters within the Delaware River, contiguous with the Pennsylvania shoreline and extending out into the Delaware River approximately 250 yards, within an area bounded by a line connecting the following points: Beginning at the Pennsylvania shoreline at latitude 39°56.87' N, longitude 075°8.36' W, thence east to latitude 39°56.85' N, longitude 075°8.20' W, thence south to latitude 39°56.45' N, longitude 075°8.25' W, thence west to the Pennsylvania shoreline at latitude 39°56.47' N, longitude 075°8.41' W, thence north following the shoreline to the originating point. These coordinates are based on North American Datum 83 (NAD83).

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

*Designated Representative* means any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

*Very Important Person (VIP)* means any person for whom the United States Capital Police request implementation of a security zone in order to supplement protection of said person(s).

*Official Patrol Vessel* means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

(c) *Regulations.* (1) In accordance with the general regulations contained in subpart D of this part, entry into or remaining in the zone described in paragraph (a) of section is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area. Access to the zone will be determined by the COTP or designated representative on a case-by-case basis when the zone is enforced. To seek permission to enter, contact the COTP or the COTP's representative on VHF-FM channel 13 or 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(4) Unless specifically authorized by on scene enforcement vessels, any vessel granted permission to enter or transit the security zones must comply with the instructions of the COTP or designated representative and operate at bare steerage or no-wake speed while transiting through the Security Zone, and must not loiter, stop, or anchor, and shall do so for the entirety of its time within the boundaries of the security zones.

(d) *Enforcement.* (1) This security zone is effective from 11 a.m. on March 9, 2022, through 11:59 p.m. on March 11, 2022.

(2) This security zone will be enforced with actual notice by the U.S. Coast Guard representatives on-scene, as well as other methods listed in 33 CFR 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection and security of the VIPs attending the Democratic National Caucus in the vicinity of Penns Landing located in Philadelphia, PA. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: March 3, 2022.

**Jonathan D. Theel,**

*Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2022-0130]

#### Safety Zone; Spirit Lake Dredging

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the USX Superfund Site Safety Zones: St. Louis River, and this notice of enforcement serves as a reminder to mariners this is still an enforced safety zone under Coast Guard regulations. Our regulation for safety zones within the Ninth Coast Guard District identifies this area as a regulated area within Spirit Lake Duluth, MN.

**DATES:** The regulations in 33 CFR 165.905(a)(1) and (2) will be enforced from April 4, 2022, through September 15, 2022.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email LTJG Joseph R. McGinnis, MSU Duluth Waterways Management, U.S. Coast Guard; telephone 218-725-3818, email *D09-SMB-MSUDuluthWWM@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the USX Superfund Site Safety Zone: St. Louis River, and this notice of enforcement serves as a reminder to mariners this is still an enforced safety zone under 33 CFR

165.905(a)(1) and (2). The USX Superfund Site Safety Zone: St. Louis River, includes Safety Zone #1 (North Spirit Lake): North Boundary 46°41'33" W, South Boundary 46°41'18" W, East Boundary 92°11'53" W, West Boundary 92°12'11" W, and Safety Zone #2 (South Spirit Lake): North Boundary 46°40'45" N, South Boundary 46°40'33" N, East Boundary 92°11'40" W, West Boundary 92°12'05" W. Transit of vessels through the waters covered by these zones is prohibited. Swimming (including water skiing or other recreational use of the water which involves a substantial risk of immersion in the water) or taking of fish (including all forms of aquatic animals) from the waters covered by these safety zones is prohibited at all times. Our regulation for safety zones within the Ninth Coast Guard District identifies this area is a regulated area within Spirit Lake Duluth, MN. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: March 3, 2022.

**Frances M. Smith,**

*Captain of the Port MSU Duluth, CDR, U.S. Coast Guard.*

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**BILLING CODE 9110-04-P**

## LIBRARY OF CONGRESS

### U.S. Copyright Office

#### 37 CFR Part 223

[Docket No. 2021-4]

#### Small Claims Procedures for Library and Archives Opt-Outs and Class Actions

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Copyright Office is issuing a final rule regarding the procedures for libraries and archives to preemptively opt out of proceedings before the Copyright Claims Board ("CCB") and the procedures for a party before the CCB with respect to a class action proceeding, under the Copyright Alternative in Small-Claims Enforcement Act of 2020.

**DATES:** Effective April 8, 2022.

**FOR FURTHER INFORMATION CONTACT:** Megan Efthimiadis, Assistant to the General Counsel, by email at [meft@copyright.gov](mailto:meft@copyright.gov), or by telephone at 202-707-8350.

## SUPPLEMENTARY INFORMATION:

### I. Background

The Copyright Alternative in Small-Claims Enforcement ("CASE") Act of 2020<sup>1</sup> directs the Copyright Office to establish the Copyright Claims Board ("CCB" or "Board"), a voluntary tribunal within the Office comprised of three Copyright Claims Officers who have the authority to render determinations on certain copyright claims for economic recoveries under the statutory threshold. The Office issued a notification of inquiry ("NOI") to describe the CASE Act's legislative background and regulatory scope and to ask for public input on various topics, including procedures addressing a preemptive opt-out from CASE Act proceedings (sometimes referred to as a "blanket" opt-out) for libraries and archives and procedures associated with class actions.<sup>2</sup>

The CASE Act directs the Register of Copyrights to "establish regulations allowing for a library or archives that does not wish to participate in proceedings before the Copyright Claims Board to preemptively opt out of such proceedings."<sup>3</sup> The Office must also "compile and maintain a publicly available list of the libraries and archives that have successfully opted out of proceedings."<sup>4</sup> For a library or archives to qualify for the opt-out election, it must "qualify for the limitations on exclusive rights under section 108 [of title 17]."<sup>5</sup>

The CASE Act also provides that the Register will establish procedures for a claimant "who receives notice of a pending class action, arising out of the same transaction or occurrence as the proceeding before the [CCB]," including the ability to "opt out of the class action."<sup>6</sup>

In September 2021, the Office published a notice of proposed rulemaking ("NPRM") addressing these two topics in depth and proposing regulatory language.<sup>7</sup> In both the NOI

and the NPRM, the Office requested input on issues related to the library and archives opt-out provision, including whether the Office should require proof or a certification that a library or archives qualifies for the opt-out provision; which entities, principals, or agents should be allowed to opt out on behalf of a library or archives; how the opt-out provision would apply to library or archives employees; and various transparency and functionality considerations related to publication of the opt-out list.<sup>8</sup> Commenters were generally supportive of the proposed library and archives opt-out regulations, with the exception of the matters addressed below. No parties submitted comments addressing the proposed class action regulations. The Office is adopting the proposed class action regulations with one clarification, as addressed below.

### II. Discussion of Final Rule

#### A. Proof or Certification Requirement

The Office's NPRM proposed "that any library or archives that wishes to take advantage of the statutory preemptive opt-out option must submit a self-certification that it 'qualifies for the limitations on exclusive rights under section 108.'"<sup>9</sup> The Office explained that this requirement could "balance the statutory goals of ensuring that *only* libraries and archives are eligible for a preemptive opt-out, but also that any such entities are not overly burdened in effecting that election."<sup>10</sup> The proposed rule also stated that any library or archives that had preemptively opted out, but that was later found by a federal court not to qualify for the section 108 exemptions, must report this finding to the CCB.

The Office proposed to "accept the facts stated in the opt-out submission unless they are implausible or conflict with sources of information that are known to the Office or the general public."<sup>11</sup> Where the CCB believes that an entity does not qualify under section 108, that entity would be not be added to, or would be removed from, the preemptive opt-out list. The Office would communicate its conclusion and

<sup>1</sup> Public Law 116-260, sec. 212, 134 Stat. 1182, 2176 (2020).

<sup>2</sup> 86 FR 16156, 16161 (Mar. 26, 2021).

<sup>3</sup> 17 U.S.C. 1506(aa)(1).

<sup>4</sup> *Id.* at 1506(aa)(2)(B).

<sup>5</sup> *Id.* at 1506(aa)(4). The CASE Act's legislative history does not discuss the library and archives opt-out provision. See generally S. Rep. No. 116-105 (2019); H.R. Rep. No. 116-252 (2019) (Note, the CASE Act's legislative history cited is for the CASE Act of 2019, S. 1273, 116th Cong. (2019) and H.R. 2426, 116th Cong. (2019), bills largely identical to the CASE Act of 2020, with the notable exception that these earlier bills did not contain the libraries and archives opt-out provision.).

<sup>6</sup> *Id.* at 1507(b)(2).

<sup>7</sup> 86 FR 49273 (Sept. 2, 2021). Comments received in response to the March 26, 2021 NOI and September 2, 2021 NPRM are available at <https://www.regulations.gov/document/COLC-2021-0001-0001/comment> and <https://www.regulations.gov/document/COLC-2021-0003-0001/comment>, respectively. References to these comments are by party name (abbreviated where appropriate), followed by "Initial NOI Comments," "Reply NOI Comments," or "NPRM Comments," as appropriate.

<sup>8</sup> 86 FR at 16161; 86 FR at 49274-77.

<sup>9</sup> 86 FR at 49275 (quoting 17 U.S.C. 1506(aa)(4)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* The Office takes a similar approach regarding registration materials. See U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 309.2 (3d ed. 2021).