



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0086]

RIN 1625-AA08

Safety Zone; Pensacola Bay, Pensacola, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for all navigable waters on Pensacola Bay within 100 yards of each vessel participating in the Tall Ships Pensacola marine event and parade in Pensacola, FL and within 100 yards of the Port of Pensacola for the duration of the marine event and parade. The proposed rulemaking is necessary to provide for the safety of life and property on these navigable waters during the Tall Ships Pensacola marine event. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2018-0086 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 proposed rulemaking, call or email LT Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251-441-5940, email Kyle.D.Berry@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Mobile
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking
PATCOM	Patrol Commander
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The sponsor for the Tall Ships Pensacola marine event submitted an application for a marine event permit for the event that will take place from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018. The event will consist of a boat parade of the tall ships in Pensacola Bay on April 12, 2018. The event will also consist of several days of public tours and sailings of the tall ships at the Port of Pensacola, Pensacola, FL, which is expected to attract several thousand spectators. The Captain of the Port Sector Mobile (COTP) has determined a safety zone is necessary to protect the public from the potential hazards associated with the tall ships during the organized parade, and public tours and sailings of these tall ships.

The purpose of this proposed rulemaking is to ensure the safety of vessels and persons during the tall ships' visit on the navigable waters of the Pensacola Bay in Pensacola, FL. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

The Coast Guard is issuing this Notice of Proposed Rulemaking (NPRM) with 15-day prior notice and opportunity to comment pursuant to authority under section (d)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). This provision authorizes an agency to publish a rule in less than 30 days before its effective date for "good cause found and published with the rule." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for publishing this NPRM with a 15-day comment period because it is impractical to provide a 30-day comment period. This proposed safety zone is necessary to ensure the safety of vessels and persons during the tall ships' visit to Pensacola. It is impracticable to publish an NPRM with a 30-day comment period because we must establish this safety zone by April 12, 2018.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on Pensacola Bay within 100 yards of each vessel participating in the Tall Ships Pensacola marine event from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018, covering each vessel from when the vessel arrives at Pensacola, FL, when moored at the Port of Pensacola, 30°24'07.2"N, 87°12'44.7"W, when underway in parade from position 30°24'07.2"N, 87°12'44.7"W to 30°19'52.6"N, 87°18'31.5"W, and when the vessel departs Pensacola, FL. The Coast Guard also proposes to establish a temporary safety zone on Pensacola Bay within 100 yards of the Port of Pensacola for the duration of the Tall Ships Pensacola

marine event from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018. The proposed rulemaking is needed to provide for the safety of life and property on these navigable waters during the Tall Ship Pensacola marine event. This proposed rulemaking restricts transit into, through, and within the zone unless specifically authorized by the COTP or a designated representative. No vessel or person would be permitted to enter the zone without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM would be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the zone.

Spectator vessels desiring to transit the zone may do so only with prior approval of the COTP or a designated representative and when so directed by that officer would be operated at a minimum safe navigation speed in a manner which will not endanger any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the zone during the effective dates and times, unless cleared for entry by or through the COTP or a designated representative. Any spectator vessel may anchor outside the zone, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the zone in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the zone and remain moored

through the duration of the event.

The COTP or a designated representative may forbid and control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the zone, citation for failure to comply, or both.

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative would terminate enforcement of the safety zone at the conclusion of the event.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, and duration of the proposed rulemaking. The proposed safety zone would take place on a small area of Pensacola Bay, lasting for only four days from April 12, 2018 through April 15, 2018. Additionally, the Coast Guard would issue Broadcast Notices to Mariners via VHF-FM marine channel 16 about the safety zone so that waterway users may plan accordingly for transits during this restriction, and the proposed rule would also allow vessels to seek permission from the COTP or a designated representative 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed 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 proposed 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 proposed 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 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 proposed 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 proposed 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 Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on Pensacola Bay within 100 yards of the Port of Pensacola and within 100 yards of any vessel participating in the Tall Ships Pensacola marine event and parade from April 12, 2018 through April 15, 2018. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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 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, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM 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, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.T08-0086 to read as follows:

§ 165.T08-0086 Safety Zone; Pensacola Bay, Pensacola, FL

(a) **Location.** The following area is a safety zone: All navigable waters of the Pensacola Bay within 100 yards of each vessel participating in the Tall Ships Pensacola marine event and parade and within 100 yards of the Port of Pensacola, 30°24'07.2"N, 87°12'44.7"W, Pensacola, FL.

(b) **Enforcement period.** This section is effective from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018.

- (c) **Regulations.**

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting through, or exiting from this area is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. A designated

representative may be a Patrol Commander (PATCOM). The PATCOM will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(3) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channels 16 or by telephone at 251-441-5976.

(4) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

(5) All persons and vessels not registered with the event sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the regulated area.

(6) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the COTP or a designated representative and when so directed by that officer will be operated at a minimum safe navigation speed in a manner that will not endanger participants in the zone or any other vessels.

(7) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by the COTP or a designated representative.

(8) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere

with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(9) The COTP or designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(10) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(11) The COTP or a designated representative will terminate enforcement of the safety zone prior to or at the conclusion of the event.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: February 15, 2018.

M.R. MCLELLAN,

Captain, U. S. Coast Guard,

Captain of the Port Sector Mobile.

BILLING CODE 9110-04-P

[FR Doc. 2018-03663 Filed: 2/21/2018 8:45 am; Publication Date: 2/22/2018]