



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0166]

RIN 1625-AA00

Safety Zone; Tall Ships Boothbay Harbor 2021, Boothbay Harbor, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a series of temporary safety zones on the waters of Boothbay Harbor, Maine. These safety zones are necessary to provide for the safety of participant vessels and the general public during Tall Ships Boothbay Harbor, 2021, an event allowing for public tours of tall ships (large sailing vessels) from various countries while at the docks of Boothbay Harbor, Maine. When enforced, this rule will prohibit persons and vessels from entering into the safety zone unless authorized by the Captain of the Port Northern New England or a designated representative.

DATES: This rule is effective from 12:01 a.m. on June 25, 2021 until 12:01 a.m. on June 28, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0166 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Shaun Doyle, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207-347-5015, e-mail Shaun.T.Doyle@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port Sector Northern New England

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish the temporary safety zone by June 25, 2021 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The potential safety hazards associated with this event and the large number of vessels and spectators in the vicinity of vessels require immediate action to ensure the safety of event participants and vessels. Further, waiting for a comment period to run is also contrary to the public interest as it would inhibit the Coast Guard’s mission to keep the ports and waterways safe, protect the public from the hazards associated with this event, and minimize the impact on vessel traffic on the navigable waterway.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this

rule would be impracticable and contrary to the public interest because the temporary safety zone regulation must be established on June 25, 2021 to ensure the safety of spectators and vessels during the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Northern New England (COTP) has determined that potential hazards associated with the public tours would be a safety concern for anyone within a 25-yard radius of the participating tall ships. The purpose of the rule is to ensure the safety of participants, spectators, and transient vessels on the navigable waters of Boothbay Harbor during the scheduled event.

IV. Discussion of the Rule

This rule establishes temporary safety zones from 12:01 a.m. on June 25, 2021 until 12:01 a.m. on June 28, 2021. The safety zones would cover all navigable waters within 25 yards of a tall ship in Boothbay Harbor. The duration of the zones is intended to ensure the safety of vessels and these navigable waters during the Tall Ships Boothbay Harbor 2021 Marine Event of National Significance. No vessel or person would be permitted to enter the safety zones without obtaining permission from the COTP or Designated Representative. If the tall ships are operating in a confined area and there is not adequate room for vessels to stay out of the safety zones due to a lack of navigable water, then vessels will be permitted to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. The navigation rules shall apply at all times while transiting the safety zones. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone only impacts a small designated area of the Booth Bay Harbor, ME. Vessel traffic would be able to safely transit around these safety zones or through it at slow speed in congested areas. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and persons or vessels desiring to enter the safety zone may do so with permission from the COTP or a designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities

between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones limited in duration and size that encompass the areas around visiting tall ships. 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 is amending 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. 0170.1.

2. Add § 165.T01-0166 to read as follows:

§ 165.T01-0166 Safety Zone; Tall Ships Boothbay Harbor 2021, Boothbay Harbor, Maine.

(a) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A “Designated Representative” is any Coast Guard Commissioned, Warrant or Petty Officer who has been designated by the Captain of the Port, Sector Northern New England (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.

(2) *Official patrol vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(4) *Tall ship.* Tall ship means any sailing vessel participating in the Tall Ships Boothbay 2021 within Boothbay Harbor, Maine.

(b) *Location.* The following areas are safety zones: All navigable waters of the United States located in Boothbay Harbor within a 25-yard radius of any tall ship.

(c) *Regulations.* (1) No person or vessel is allowed within the safety zones unless authorized by the cognizant Captain of the Port or their Designated Representative.

(2) Persons or vessels operating within a confined harbor or channel, where there is not sufficient navigable water outside of a safety zone to safely maneuver are allowed to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. Vessels operating within the safety zones shall not come within 25 yards of a tall ship unless authorized by the cognizant Captain of the Port, their Designated Representative, or the on-scene official patrol.

(d) *Enforcement period.* This rule will be enforced from 12:01 a.m. on Friday, June 25, 2021 through 12:01 a.m. on Monday, June 28, 2021.

(e) *Navigation Rules.* The Navigation Rules shall apply at all times within a tall ships safety zone.

Dated: June 11, 2021

B. J. LeFebvre
Captain, U.S. Coast Guard
Captain of the Port
Sector Northern New England
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