



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2023-0524

RIN 1625-AA00

Safety Zone; Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters within 200-yards of the Virginia Beach oceanfront. The safety zone is needed to protect mariners from the potential hazards which would result if a large congregation of spectator vessels anchors in close proximity to a shoreside concert on the Virginia Beach oceanfront. Entry of vessels or persons into this zone when it is subject to enforcement is prohibited unless specifically authorized by the Captain of the Port, Sector Virginia, or their designated representative. Vessels within the zone must leave the zone before any period of enforcement begins.

DATES: This rule is effective June 23, 2023, through June 25, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0524 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 about this rule, call or email LCDR Ashley Holm, Chief Waterways Management Division U.S. Coast Guard; 757-617-7986, Ashley.E.Holm@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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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 the safety zone is needed for a shoreside concert and immediate action is needed to protect mariners from the potential safety hazards which could result if a large congregation of vessels anchors in the vicinity of the concert, creating unsafe conditions near the Virginia Beach oceanfront. It is impracticable to publish an NPRM because we must establish this safety zone by June 23, 2023.

Under 5 U.S.C. 553(d)(3), 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 because immediate action is needed to protect mariners from the potential safety hazards associated with vessels congregating at the Virginia Beach oceanfront.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Virginia (COTP) has determined that potential hazards associated with a shoreside concert starting June 23, 2023, will be a safety concern for anyone within 200-yards of the beach. This rule is needed to protect mariners, vessels, and the marine

environment in the navigable waters within the safety zone during the 3-day concert.

IV. Discussion of the Rule

This rule establishes a safety zone which will be subject to enforcement from 11 a.m. until midnight, each day from June 23-25, 2023. The safety zone will cover all navigable waters within 200 yards of the Virginia Beach oceanfront shoreline bounded by the following positions: 36°49'49.20" N, 075°58'04.54" W; 36°49'49.3" N, 075°57'58.5" W; 36°50'13.2" N, 075° 58'5.4" W; 36° 50'13.2" N, 075° 58 12.6" W. The duration of the zone is intended to protect mariners, vessels, and the marine environment in these navigable waters during the 3-day concert. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). 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. Vessel traffic will be able to safely transit around this safety zone which will impact a small, designated area of the Atlantic Ocean in an area where vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the 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 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please 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 a safety zone that will prohibit entry within 200 yards of the Virginia Beach oceanfront shoreline. 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

Accordingly, 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, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-0524 to read as follows:

§ 165.T05-0524 Safety Zone; Atlantic Ocean, Virginia Beach, VA.

(a) *Location.* The following area is a safety zone: All waters of the Virginia Beach oceanfront, from surface to bottom, encompassed by a line connecting the following points: 36°49'49.20" N, 075°58'04.54" W; 36°49'49.3" N, 075°57'58.5" W; 36°50'13.2" N, 075°58'5.4" W; 36°50'13.2" N, 075°58'12.6" W. These coordinates are based on WGS 84 coordinates.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer

operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the safety zone. The term also includes Virginia Beach Police Marine Patrol to permit passage into or through the safety zone listed in paragraph (a) of this section, or to notify vessels and individuals that they have entered a safety zone and are required to depart immediately.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. Vessels present must exit the safety zone before the start of any period in which it is subject to enforcement.

(2) To seek permission to enter, contact the Virginia Beach Police Marine Patrol on VHF-FM Channel 13 or 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period[s].* This section will be enforced from 11 a.m. to midnight each day from June 23-25, 2023.

Dated: June 15, 2023.

J. A. Stockwell,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Virginia.

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