



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0154]

RIN 1625-AA00

Safety Zone; Indian Island, Port Townsend Bay, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters West of Indian Island in Port Townsend Bay, Washington. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a naval exercise. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Puget Sound.

DATES: This rule is effective from 7 a.m. on March 12, 2024, through 7 p.m. March 14, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0154 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 LTJG Kaylee Lord, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone 206-217-6051, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port of Sector Puget Sound
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 under authority in 5 U.S.C. 553(b)(B). This statutory 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.” 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 contrary to the public interest to publish a notice of proposed rulemaking regarding the movement of United States Navy vessels undergoing national security exercises in advance, as some of the movements are classified. It is impracticable for the Coast Guard to publish an NPRM because we must establish this safety zone by March 12, 2024 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Also, 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 respond to potential safety hazards associated with the naval exercise.

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 Puget Sound (COTP) has determined that potential hazards associated with the naval exercise starting March 12, 2024, will be a safety concern for anyone within a 100-yard radius of the exercise area. This rule is needed to protect

personnel, vessels, and the marine environment in the navigable waters within the safety zone while the exercise is being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on March 12, 2024 through 7 p.m. on March 14, 2024. The safety zone will cover all navigable waters bounded by the following coordinates: commencing west of Indian Island at latitude 48° 4' 13.3" N., longitude 122° 46' 37.5" W.: thence northerly to latitude 48° 5' 43.6" N., longitude 122° 47' 4.1" W.: thence easterly to latitude 48° 5' 43.6" N., longitude 122° 44' 49.3" W.: thence south easterly to latitude 48° 5' 17.7" N., longitude 122° 44' 40.5" W.: thence south westerly to latitude 48° 4' 51.8" N., longitude 122° 45' 19.1" W.: thence south easterly to latitude 48° 2' 43.8" N., longitude 122° 44' 41.6" W.: thence westerly to latitude 48° 2' 37.1" N., longitude 122° 45' 33.5" W.: thence northerly to latitude 48° 3' 35.6" N., longitude 122° 45' 50" W to the point of beginning.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the exercise is being conducted. 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, and duration of the safety zone. The regulated area consists of all navigable waterways within 100 yards of the established area in Port Townsend Bay, WA as previously listed. The safety zone will be enforced for a maximum of 36 hours total and thus is limited in time and scope. Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, vessel traffic will be able to safely transit around this safety zone and the rule will allow vessels to seek permission to transit 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 lasting only 36 hours that will prohibit entry within 100 yards of the designated area around the naval exercise. 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, 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.T13-0154 to read as follows:

§ 165.T13-0154 Safety Zone; Sector Puget Sound Captain of the Port Zone, Indian Island, Port Townsend Bay, Washington.

(a) *Location.* The following area is a safety zone: all navigable waters bounded by the following coordinates: commencing west of Indian Island at latitude 48° 4' 13.3" N., longitude 122° 46' 37.5" W.: thence northerly to latitude 48° 5' 43.6" N., longitude 122° 47' 4.1" W.: thence easterly to latitude 48° 5' 43.6" N., longitude 122° 44' 49.3" W.: thence south easterly to latitude 48° 5' 17.7" N., longitude 122° 44' 40.5" W.: thence south westerly to latitude 48° 4' 51.8" N., longitude 122° 45' 19.1" W.: thence south easterly to latitude 48° 2' 43.8" N., longitude 122° 44' 41.6" W.: thence westerly to latitude 48° 2' 37.1" N., longitude 122° 45' 33.5" W.: thence northerly to latitude 48° 3' 35.6" N., longitude 122° 45' 50" W to the point of beginning.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including 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 Puget Sound (COTP) in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the COTP or designated representative.

(d) *Authorization.* In order to transit through this safety zone, authorization must

be granted by the COTP or their designated representative. All vessel operators desiring entry into this safety zone shall gain authorization by contacting either the on-scene U.S. Coast Guard patrol craft on VHF Ch 13 or Ch 16, or Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217-6002. Requests shall indicate the reason why movement within the safety zone is necessary and the vessel's arrival and/or departure facility name, pier and/or berth. Vessel operators granted permission to enter this safety zone will be escorted by the on-scene patrol until no longer within the safety zone.

(e) *Enforcement period.* This rule will be enforced from 7 a.m. March 12, 2024 through 7 p.m. March 14, 2024.

Dated: March 4, 2024.

Mark A. McDonnell,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Puget Sound.

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