

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0743]

RIN 1625–AA00

Safety Zone; Lahaina Boat Basin, Maui, HI—Emergency Operations and Port Recovery

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters in the vicinity of Lahaina Boat Basin, Maui, Hawaii. The temporary safety zone encompasses all waters extending 200 yards from shore from the northernmost boundary, 60 yards south of the intersection of Front Street and Baker Street, Maui, to the southernmost boundary, 20 yards south of the intersection of Front Street and Shaw Street, Maui. This action is necessary to provide for the safety of persons and the marine environment from the potential safety hazards associated with the damage assessment, debris management, vessel salvage, and port recovery of Lahaina Boat Basin and surrounding waters, through December 15, 2023. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Honolulu or designated representative.

DATES: This rule is effective without actual notice from December 8, 2023 through December 15, 2023. For the purposes of enforcement, actual notice will be used from December 01, 2023, until December 8, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0743 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 Lieutenant Commander Wade Thomson, Waterways Management Division, U.S. Coast Guard Sector Honolulu at (808) 541–4359 or Wade.P.Thomson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port Sector Honolulu

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

On August 8, 2023, high winds and wildfires struck portions of Maui, Hawaii, causing damage to coastal infrastructure and prompting mass rescue operations for area residents.

On August 9, 2023, the Coast Guard issued a temporary rule establishing a safety zone for all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui, to protect personnel, vessels, and the marine environment from potential hazards associated with emergency response and port recovery operations after wildfires affected the area. The safety zone was effective through August 23, 2023. A copy of the rulemaking that ended on August 23, 2023, is available in Docket USCG–2023–0669, which can be found using instructions in the **ADDRESSES** section.

On September 22, 2023, the Coast Guard issued a rulemaking creating a temporary safety zone that encompassed all waters extending 200 yards from shore from the northernmost point, 100 yards south of the intersection of Kaniua Road and Honoapiilani Highway (Highway 30), Maui, thenceforth to the southernmost boundary at the southern end of Launiupoko Beach Park, Maui, with an effective end date of December 5, 2023. A copy of the rulemaking ending on December 5, 2023 is available in the Docket USCG–2023–0743, which can be found using instructions in the **ADDRESSES** section. However, additional time is needed to continue to provide protection against hazards in the area due to emergency response and port recovery operations. As a result, the Coast Guard is establishing through temporary regulations a safety zone that will be in effect through December 15, 2023. The safety zone encompasses all waters extending 200 yards from shore from the northernmost boundary, 60 yards south of the intersection of Front Street and Baker Street, Maui, to the southernmost boundary, 20 yards south of the intersection of Front Street and Shaw Street, Maui.

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) because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the continuing damage assessment and salvage operations.

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 to restrict vessel traffic within the safety zone is needed to protect life, property, and the environment, therefore a 30-day notice period is impracticable. Delaying the effective date would be contrary to the safety zone’s intended objectives of providing immediate protection to on-scene emergency personnel, creating a working buffer necessary to mitigate any safety and potential pollution threats caused by the wildfires and establishing immediate maritime safety in the vicinity of on-scene damage assessments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Coast Guard Captain of the Port Sector Honolulu (COTP) has determined that the potential hazards associated with the emergency response and port recovery efforts connected to wildfires in the area constitute a safety concern for anyone within the designated safety zone. This rule is necessary to protect personnel, vessels, and the marine environment within the navigable waters of the safety zone during ongoing emergency response and port recovery operations.

IV. Discussion of the Rule

This rule establishes a temporary safety zone that will be enforced from December 01, 2023, through December 15, 2023, at 11:59 p.m., or until emergency response and port recovery operations are complete, whichever is earlier. If the safety zone is terminated prior to 11:59 p.m. on December 15, 2023, the Coast Guard will provide notice via a broadcast notice to mariners. The temporary safety zone encompasses all waters extending 200 yards from shore from the northernmost

boundary, 60 yards south of the intersection of Front Street and Baker Street, Maui, to the southernmost boundary, 20 yards south of the intersection of Front Street and Shaw Street, Maui. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with ongoing emergency response and port recovery operations after wildfires affected the area. No vessel or person will be permitted to enter the safety zone absent the express authorization of the COTP or her 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 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 limited duration of the safety zone. This zone impacts a small, designated area of the Lahaina Harbor and surrounding waters and operations may suspend early at the discretion of the COTP.

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 certain navigable waters of Lahaina Boat Basin. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protestors. 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.T14–0743 to read as follows:

§ 165.T14–0743 Safety Zone; Pacific Ocean, Lahaina Boat Basin, Maui, HI—Emergency Operations and Port Recovery.

(a) *Location.* The following area is a safety zone: All waters extending 200 yards from shore from the northernmost boundary, 60 yards south of the intersection of Front Street and Baker Street, Maui, to the southernmost boundary, 20 yards south of the intersection of Front Street and Shaw Street, Maui.

(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 Honolulu (COTP) in the enforcement of the safety zone.

(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.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF/FM Chanel 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.* This rule will be enforced December 1, 2023, through December 15, 2023, unless an earlier end is announced by broadcast notice to mariners.

Dated: December 1, 2023.

A.L. Kirksey,

Captain, U.S. Coast Guard, Captain of the Port Sector Honolulu.

[FR Doc. 2023–26808 Filed 12–7–23; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Parts 662 and 663

RIN 1840–AD90

Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program and Faculty Research Abroad Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The U.S. Department of Education (Department or we) issues final regulations governing the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program and the Faculty Research

Abroad (FRA) Fellowship Program. This rule revises language proficiency qualifications for DDRA and FRA applicants and clarifies the Secretary's discretionary use of eligibility criteria.

DATES: These regulations are effective January 8, 2024.

FOR FURTHER INFORMATION CONTACT:

Pamela J. Maimer, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202. Telephone: (202) 453–6891. Email: pamela.maimer@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Background

The DDRA Fellowship Program provides opportunities for doctoral students to engage in dissertation research abroad in modern foreign languages and area studies. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States and to increase scholars' knowledge of the culture of the people in the countries or regions of research. The program provides fellowships to doctoral candidates who are planning a teaching career in the United States upon completion of their programs and who possess sufficient foreign language skills in the country or countries of research to carry out the dissertation research project.

The FRA Fellowship Program provides opportunities for faculty members teaching modern foreign languages or area studies at U.S. institutions of higher education (IHEs) to engage in research abroad in those languages or areas studied. The program is designed to contribute to the faculty members' foreign language skills and to increase knowledge of the culture of the people in the countries or regions of research.

On March 21, 2023, the Secretary published a notice of proposed rulemaking (NPRM) for these parts in the *Federal Register*.¹ These final regulations contain changes from the NPRM, which we explain in the *Analysis of Comments and Changes* section of this document.

Public Comment: In response to our invitation in the NPRM, the Department received five comments on the proposed regulations. We address those comments in the *Analysis of Comments and Changes* section below.

Analysis of Comments and Changes

We group issues according to subject, with appropriate sections of the regulations referenced in parentheses, where applicable. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes (such as renumbering paragraphs, adding a word, or typographical errors). Additionally, we do not address recommended changes that the statute does not authorize the Secretary to make or comments pertaining to operational processes. We generally do not address comments pertaining to issues that were not within the scope of the NPRM.

An analysis of the public comments received and the changes to the regulations since publication of the NPRM follows.

General Support

Comments: Two commenters supported the proposed regulations.

Discussion: We thank the commenters for their support. We believe these changes maintain the statutory goals and the integrity of the programs.

Changes: None.

General Opposition

Comments: One commenter objected to the existence of both the DDRA and the FRA programs.

Discussion: These programs are authorized by statute.²

Changes: None.

Secretarial Discretion (§§ 662.21(c) and 663.21(c))

Comments: One commenter asked the Department to explain whether the proposed rule is intended to merely clarify the Secretary's existing discretion to vary selection criteria point values assigned to DDRA or FRA, which was granted in a 2005 rulemaking, or whether the proposed rule would grant new discretion to the Secretary. If the latter, the commenter believed that the Department should explain any additional discretion and give the public an opportunity to comment on the proposed expansion.

The commenter further opined that, as the Fulbright-Hays Act and the Department's eligibility regulations require the Secretary to meaningfully consider foreign language skills, the Department should finalize §§ 662.21(c) and 663.21(c) without the proposed "one or more" phrase in the introductory text or otherwise clarify that the Secretary may not ignore foreign language skills when awarding

¹ 88 FR 16924.

² 22 U.S.C. 2452(b)(6).