

allowance in their cost of service.¹⁸ Following *United Airlines*, in 2018, the Commission required natural gas pipelines to immediately eliminate that double recovery,¹⁹ but declined to require something similar for oil pipelines, promising, quite explicitly, that it would address the issue when it next updated the index.²⁰

9. So much for that. In today's order, the Commission goes back on its word and allows any oil pipeline that was an MLP in 2014 to retroactively remove its income tax allowance from its 2014 cost-of-service data.²¹ That change juices the data to make it look like oil pipeline costs increased by more than they actually did between 2014 and 2019, thereby leading to a higher index value. And, as if that weren't bad enough, today's order also allows any pipeline that transitioned from an MLP to a C-Corporation, thereby regaining the right to an income tax allowance, to remove the income tax allowance from their 2014 numbers.²² The result is, you guessed it, another increase in the cost change data, a higher index level, and more expensive rates for customers.

10. Nothing in today's order justifies that result. The Commission summarily concludes that the index update is not an appropriate vehicle for incorporating the post-*United Airlines*' policy changes.²³ That proposition is hardly self-evident, especially given that all five then-Commissioners felt differently just two years ago.²⁴ In any case, the fact of the matter is that tax costs are real costs,²⁵ meaning that oil pipelines' costs in the past five years have changed as a result of the *United Airlines* decision. Finally, renegeing on our promise in the 2018 Income Tax Policy Statement perpetuates the effects of the double recovery gravy train that the court

invalidated in *United Airlines*. That is simply indefensible.

* * * * *

11. The Commission's actions today hand oil pipelines what will amount to a multi-billion-dollar windfall over the next five years. Calling these decisions arbitrary and capricious or unreasoned would let the Commission off easy. They represent a complete abdication of our statutory responsibility to protect consumers—the companies and individuals who will be stuck paying those additional billions of dollars to the oil pipelines. Although our responsibilities under the Interstate Commerce Act don't always get the same attention from the public as some of our other proceedings, today's order illustrates the tremendous financial consequences that they can have for everyday customers. I hope that proceedings like today's lead interested parties everywhere to more closely scrutinize the Commission's oil orders so that these multi-billion-dollar handouts do not become a matter of course.

For these reasons, I respectfully dissent.

Richard Glick,
Commissioner.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2021-0057]

RIN 1625-AA00

Emergency Safety Zone; Richmond Entrance Channel, Richmond, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Richmond Entrance Channel off of Richmond, CA in support of the safe navigation of vessels and environmental response efforts to address the hydrocarbon release from the Richmond Long Wharf on February 09, 2021. Based on this information, this safety zone is necessary to protect life, vessels, and the maritime environment. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission from the Captain of the Port

San Francisco or a Captain of the Port San Francisco designated representative.

DATES: This rule is effective without actual notice on February 16, 2021. For the purposes of enforcement, actual notice will be used from 12:01 a.m. February 10, 2021 until February 16, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0057 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Mickey Price, Waterways Management, U.S. Coast Guard; telephone (415) 399-7442, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port San Francisco
DHS Department of Homeland Security
§ 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 with respect to this rule because it is impracticable. The Coast Guard received notice of the hydrocarbon release into the waterway and the resulting need for this safety zone on February 9, 2021. It is impracticable to go through the full rulemaking process, including providing a reasonable comment period and considering those comments, because the Coast Guard must establish this emergency temporary safety zone by February 10, 2021.

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 contrary to public interest because immediate action is

¹⁸ *Id.* P 2.

¹⁹ *Interstate & Intrastate Nat. Gas Pipelines; Rate Changes Relating to Fed. Income Tax Rate*, 162 FERC ¶ 61,226 (2018).

²⁰ The Commission's statement is worth reading in whole: "When oil pipelines file Form No. 6, page 700 on April 18, 2018, they must report an income tax allowance consistent with *United Airlines* and the Commission's subsequent holdings denying an MLP an income tax allowance. Based upon page 700 data, the Commission will incorporate the effects of the post-*United Airlines*' policy changes (as well as the Tax Cuts and Jobs Act of 2017) on industry-wide oil pipeline costs in the 2020 five-year review of the oil pipeline index level. In this way the Commission will ensure that the industry-wide reduced costs are incorporated on an industry-wide basis as part of the index review." 2018 Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 46.

²¹ 2020 Index Review, 173 FERC ¶ 61,245 at P 16.

²² *Id.* P 20.

²³ *Id.* P 18.

²⁴ 2018 Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 46.

²⁵ Ask anyone who pays their taxes.

needed to protect personnel, vessels, and the maritime environment from potential hazards near the Richmond Long Wharf.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the hydrocarbon release exist near the Richmond Long Wharf. This rule is needed because environmental response operations create a significant hazard to any vessels transiting the safety zone area. The environmental response operations may be complex in nature and involve multiple vessels. These operations, when conducted in close proximity to transiting vessels, create unpredictable hazards, making it necessary to restrict vessel traffic within the impacted area until environmental response operations are completed.

IV. Discussion of the Rule

This rule establishes a temporary safety zone in navigable waters 250 yards around the Richmond Long Wharf, Richmond, CA as announced in a mariner information broadcast from February 10, 2021 at 12:01 a.m. through February 16, 2021 at 11:59 p.m. The effect of the temporary safety zone will be to restrict vessel navigation in this area until the Coast Guard determines that the hazards associated with the hydrocarbon release and response efforts are no longer present. Except for persons or vessels authorized by the Captain of the Port or a designated representative, no vessel may enter or remain in the restricted area. A “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

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 limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the water encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP’s 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 temporary 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 contact 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 established to deal with an emergency situation, lasting less than one week, that will prohibit vessel traffic near the hydrocarbon response efforts in the vicinity of the Richmond Long Wharf. It is categorically excluded from further review under paragraph L60(c) 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 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.

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; 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.T11-048 to read as follows:

§ 165.T11-048 Emergency Safety Zone; Richmond Entrance Channel, Richmond, CA.

(a) *Location.* The following area is a safety zone: All navigable waters 250 yards around the Richmond Long Wharf, Richmond, CA.

(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 or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (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) The safety zone is closed to all vessel traffic, except as may be

permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP’s designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative. Persons and vessels may request permission to enter the safety zone on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Enforcement period.* This section will be enforced from February 10, 2021 at 12:01 a.m. until February 16, 2021 at 11:59 p.m. or as announced via marine information broadcast.

(e) *Information broadcasts.* The COTP or the COTP’s designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with 33 CFR 165.7.

Dated: February 9, 2021.

Marie B. Byrd,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 303

[Docket No. 20-CRB-0013-RM]

Procedural Regulations of the Copyright Royalty Board Regarding Electronic Filing System (eCRB)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are amending regulations governing the electronic filing of documents through the Copyright Royalty Board’s electronic filing system (eCRB) to permit attorney designees with approved eCRB user accounts to file on behalf of attorneys.

DATES: Effective February 16, 2021.

ADDRESSES: Docket: For access to the docket to read background documents, go to eCRB at <https://app.crb.gov> and perform a case search for docket 20-CRB-0013-RM.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, at 202-707-7658 or crb@loc.gov.

SUPPLEMENTARY INFORMATION: On December 28, 2020, the Copyright

Royalty Judges (Judges) published a document in the **Federal Register** seeking comments on a proposed rule to add to Rule 303.5(c) a fourth category of filer that would be required to obtain an eCRB password: attorney designee. See 85 FR 84279 (Dec. 28, 2020). An attorney designee would be defined as “a person authorized to file documents on behalf of an attorney.” The proposed rule also included non-substantive changes to Rule 303.5.¹ The Judges received no comments. Therefore, for the reasons indicated in the December 28, 2020 document, the Judges adopt the changes and additions to part 303 proposed in that document, as detailed in this final rule.

List of Subjects in 37 CFR Part 303

Administrative practice and procedure, Copyright, Lawyers.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 303 as follows:

PART 303—GENERAL ADMINISTRATIVE PROVISIONS

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 17 U.S.C. 803.

■ 2. Revise § 303.5 to read as follows:

§ 303.5 Electronic filing system (eCRB).

(a) *Documents to be filed by electronic means.* Except as otherwise provided in this chapter, all attorneys must file documents with the Copyright Royalty Board through eCRB. Pro se parties may file documents with the Copyright Royalty Board through eCRB, subject to § 303.4(c)(2).

(b) *Official record.* The electronic version of a document filed through and stored in eCRB will be the official record of the Copyright Royalty Board.

(c) *Obtaining an electronic filing password—(1) Attorneys.* An attorney must register for an eCRB account and create an eCRB password in order to file documents or to receive copies of orders and determinations of the Copyright Royalty Judges. The attorney’s eCRB account and password will be activated upon approval by the Copyright Royalty Board of the attorney’s completed online application form available on the eCRB website.

(2) *Attorney designees.* A person authorized by an attorney to file documents on behalf of that attorney (an attorney designee) must register for an eCRB account and create an eCRB password in order to file documents on

¹ See 85 FR 84279.