

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165****[Docket No. USCG–2022–0704]****Navigation and Navigable Waters; Technical and Conforming Amendment to Authority Citation****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: This final rule makes a non-substantive conforming amendment to our authority citations for Coast Guard regulations that establish safety zones, security zones, and regulated navigation areas. This rule would conform our authority citation to reflect an amendment introduced by The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective November 29, 2022.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket number USCG–2022–0704, which is available at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Kate Sergent, Coast Guard; telephone 202–372–3860, email kate.e.sergent@uscg.mil.

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I. Abbreviations

CFR Code of Federal Regulations
 DHS Department of Homeland Security
 OMB Office of Management and Budget
 U.S.C. United States Code

II. Discussion of the Rule

This technical amendment final rule updates the authority citations for part

165 within Title 33 of the CFR. This rule adds the statutory authority 46 U.S.C. 70124 as a regulatory authority for 33 CFR part 165. Specifically, 46 U.S.C. 70124 gives the Secretary authority to issue regulations necessary to implement 46 U.S.C. Chapter 701. Within Chapter 701, the delegated authority in 46 U.S.C. 70116 authorizes the Commandant to establish safety and security zones to prevent or respond to an act to terrorism, cyber incidents, transitional organized crime, or foreign state threats. The Secretary has delegated this regulatory authority to the Commandant in Department of Homeland Security Delegation No. 00170.1(II)(71), Revision No. 01.3.

The Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. 115–282, (2018)) redesignated several provisions of the Ports and Waterways Safety Act into 46 U.S.C. chapters 700 and 701. That Act moved 33 U.S.C. 1226 into section 46 U.S.C. 70016. Section 70116 is a potential statutory authority we may use to establish safety and security zones under 33 CFR part 165.

We are adding the general regulatory authority in 46 U.S.C. 70124 to the authority citation for part 165 because 46 U.S.C. 70116(c) was amended in 2021 under section 8341 of The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283, Jan. 1, 2021). This amendment removed the statement about section 70116 being treated as part of 46 U.S.C. chapter 700 for purposes of rulemaking authority in 46 U.S.C. 70034. With that statement removed, we instead rely on the regulatory authority in 46 U.S.C. 70124 for the authorities laid out in 46 U.S.C. 70116.

The Coast Guard periodically issues technical, organizational, and conforming amendments to existing regulations in Title 33 of the CFR. These technical amendments provide the public with more accurate and current regulatory information, but do not change Title 33 of the CFR's effect on the public.

III. Regulatory History

We did not publish a notice of proposed rulemaking for this rule. Under Title 5 of the United States Code (U.S.C.), Section 553(b)(A), the Coast Guard finds that this final rule is exempt from notice and public comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. This rule only updates the authority citation where the agency lists the relevant authorities to issue regulations in part 165 of the CFR.

In addition, the Coast Guard finds that notice and comment procedures are unnecessary for this final rule under 5 U.S.C. 553(b)(B), as this rule consists of only technical and editorial corrections and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this final rule effective upon publication in the **Federal Register**. Delaying the effective date of this conforming amendment is unnecessary because the change to our statutory regulatory authorities is an agency procedural update and it will have no impact on the public.

IV. Basis and Purpose

This final rule makes technical and editorial corrections in 33 CFR part 165. These changes are necessary to update the authority citations we rely on for issuing regulations in 33 CFR part 165. This rule does not create or change any substantive requirements for the public.

This final rule is issued under the authority of 5 U.S.C. 552(a) and 553; 14 U.S.C. 102 and 503; and Department of Homeland Security Delegation No. 00170.1(II)(71), Revision No. 01.3.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by OMB. This rule involves non-substantive changes and internal agency practices and procedures; it will not impose any additional costs on the public or the government. The qualitative benefit of the non-substantive changes is increased clarity of regulations and their authority. By

the adding statutory citations for all of the relevant authorities we rely on to issue the regulated navigation area regulations, we increase the clarity of the authorities in the CFR.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” is comprised of 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.

A notice of proposed rulemaking does not precede this rule. Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. This final rule will not change any of the burdens in the collections currently approved by OMB.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. 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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant

energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final Record of Environmental Consideration supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble. This final rule involves non-substantive technical, organizational, and conforming amendments to existing Coast Guard regulations. Therefore, this rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L54 pertains to regulations which are editorial or procedural.

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:

Title 33—Navigation and Navigable Waters

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 is revised 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.

Michael Cunningham,
Chief, Office of Regulations and
Administrative Law.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0914]

RIN 1625–AA00

Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX

AGENCY: Coast Guard, DHS.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the period of a temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. This action is necessary to provide protection to the levee protection wall located at the north end of the turning basin until permanent repairs can be effected. This rule prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative.

DATES: This rule is effective from February 1, 2023 through January 31, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2017–0914 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 Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX, U.S. Coast Guard; telephone 409–719–5086, email scott.k.whalen@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port, Marine Safety Unit Port Arthur
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
USACE U.S. Army Corps of Engineers
U.S.C. United States Code

II. Background Information and Regulatory History

On August 14, 2017, the Coast Guard established a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX.¹ That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts.

On April 16, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX (83 FR 16267). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this temporary safety zone. During the comment period that ended on June 15, 2018, we received one comment.

On July 18, 2018, the Coast Guard published the temporary final rule establishing the safety zone until January 31, 2023 (83 FR 33842).

In August 2022, the U.S. Army Corps of Engineers (USACE) informed the Coast Guard that permanent repairs to the flood protection wall would not be completed for another two years. Therefore, the Coast Guard proposed to extend the effective period of the temporary safety zone through January 31, 2025.

On October 5, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX (87 FR 60363). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action to extend this temporary safety zone. During the comment period that ended on November 4, 2022, we received one comment.

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 (COTP) has determined that potential damage to temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding

community. The USACE has requested, and the Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published October 5, 2022. The comment supported the need for the safety but also commented on the inconvenience to the public due to a temporary closure of Texas 124 bridge. This rulemaking does not require nor discuss the closure of any bridges in the area, it simply excludes vessel traffic from the affected waterway to protect a damaged floodwall. Therefore, no changes in the regulatory text were necessary.

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 entities impacted by the safety zone. This safety zone affects approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29°50′57.45 N. A facility receives vessels within this zone and that facility would be permitted to receive vessels based on previously agreed to maneuvering calculations and plans.

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 received no comments from the Small Business Administration

¹ See the temporary final rule titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX, Docket No. USCG–2017–0797 (83 FR 4843).