



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 110**

**[Docket Number USCG-2018-0388]**

**RIN 1625-AA01**

**Anchorage Ground; Sabine Pass, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the anchorage regulations for the Sabine Pass Channel, Sabine Pass, TX anchorage ground for the navigational safety of vessels entering and exiting a new liquefied natural gas terminal mooring basin being constructed on the eastern waterfront of the Sabine Pass Channel. This proposed rulemaking would reduce the overall size of the existing anchorage. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0388 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Scott K. Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409-719-5086, e-mail: [Scott.K.Whalen@uscg.mil](mailto:Scott.K.Whalen@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
LNG	Liquefied natural gas
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

In 1967, the Secretary of the Army transferred responsibility for certain functions, power, and duties to the Secretary of Transportation. Among the responsibilities transferred to the Secretary of Transportation was establishment and administration of water vessel anchorages. On December 12, 1967, the regulations for the Sabine Pass Anchorage Ground were republished in 33 CFR part 110, without change, under this new authority (32 FR 17726). The regulations for the Sabine Pass Channel Anchorage Ground in Sabine, TX are contained in 33 CFR 110.196.

The legal basis and authorities for this notice of proposed rulemaking are found in 33 U.S.C. 471, 33 CFR 1.05-1, and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorages. As reflected in title 33 CFR 109.05, the Commandant of the U.S. Coast Guard has delegated the authority to establish anchorage grounds to U.S. Coast Guard District Commanders.

As discussed earlier, administration of the Sabine Pass Anchorage Ground was originally transferred to the Coast Guard in 1967. Under 33 CFR 110.196, the anchorage ground is “for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting weather and tidal conditions favorable to the resumption of their voyages.” In 2006, Cheniere Energy began construction of a liquefied natural gas (LNG) terminal on the eastern waterfront of the Sabine Pass Channel, immediately north and adjacent to the Sabine Pass Channel Anchorage Ground. On October 3, 2006, the Coast Guard published a notice of proposed rulemaking proposing to reduce the area of the Sabine Pass Anchorage Ground by 800 feet on the north end of the anchorage in order to reduce the risk of collision between anchored vessels and berthing and unberthing vessels at Cheniere’s terminal, as well as to reduce the risk of grounding by providing a larger maneuvering area for vessels calling Cheniere’s terminal (71 FR 58330). Both comments we received during that rulemaking process supported the proposed reduction on the basis of enhancing navigation safety. One commenter noted that “the anchorage was infrequently used and would have minimal impact on the economy.” On January 5, 2007, the Coast Guard published the final rule reducing the overall size of the anchorage consistent with the proposal (72 FR 463).

On November 8, 2017, we received a request from Sabine Pass LNG L.P. to disestablish the Sabine Pass Anchorage Ground in its entirety. The request states that the anchorage is rarely used and its disestablishment would not significantly impact vessels that use the area.

On June 15, 2018, the Coast Guard published a notice of inquiry; request for comments asking for public comments in response to Sabine Pass LNG’s request to

disestablish the anchorage ground titled Anchorage Ground; Sabine Pass, TX (83 FR 27932). There, we explained that our data showed that the anchorage is utilized an average of 27 times each year by shallow draft vessels (for example, tows, dredges, and work boats) for shortening tow or for use as a staging area for local work projects such as dredging, and that deep draft vessels have not made use of the anchorage in the last decade. In particular, we requested public input on whether there remains a need for a regulated anchorage in this area, and if so, to what extent and for what purpose; if a reduction in size of the anchorage would meet current and anticipated industry needs; or if options other than disestablishment should also be considered.

In response to the above inquiry, the Coast Guard received three comments. One commenter observed that the navigation channel and the anchorage overlapped, and expressed concern that the elimination of the anchorage ground would reduce the federally maintained channel and have a negative impact on maritime activities. The Coast Guard consulted with the U.S. Army Corps of Engineers and confirmed that although overlapping, the elimination of the anchorage ground would not alter the dimensions of the federal channel. Therefore, there would be no reduction in the dimensions of the federal channel by the disestablishment or the reduction of the anchorage.

One comment was filed after the deadline, but we have added it to the notice of inquiry; request for comments online docket folder. That commenter requested additional time to comment in order to study the effect that the removal of the anchorage ground might have on its proposed upstream facility. That commenter will have an

additional period to present their comment during the comment period provided in this notice of proposed rulemaking (NPRM).

One commenter expressed support for maintaining anchorages generally, and listed pros and cons for maintaining this anchorage ground. The Coast Guard agrees that even occasional, or limited use of the anchorage supports maintaining a portion of the anchorage, and that reducing the size of the anchorage would both provide for the safety of vessels using Cheniere's terminal, as well as the needs of the maritime community.

The purpose of this proposed rulemaking is to reduce the overall dimensions of the Sabine Pass Channel anchorage ground. This action would provide for the safe navigation of vessels entering and exiting Cheniere Energy's new vessel berth while retaining a portion of the anchorage for use by those vessels that continue to use the anchorage grounds.

### **III. Discussion of Proposed Rule**

Cheniere Energy is constructing a new LNG mooring basin on the eastern waterfront of the Sabine Pass Channel. This facility is located immediately south and adjacent to the existing mooring basin. Due to the angle that the terminal berth lays relative to the channel, vessels intending to berth at or depart the LNG terminal would have to utilize a portion of the existing anchorage to swing the vessels into position for mooring. Vessels anchored in the existing anchorage would be at an increased risk for being struck by an arriving or departing vessel.

In order to reduce this risk, the Coast Guard proposes to reduce the overall size of the anchorage area. This action would reduce the possible conflict associated with vessels that may anchor too close to the entrance of the LNG terminal. It would also

provide a larger maneuvering area for vessels arriving to or departing from the LNG terminal, which consequently would reduce the possibility of a grounding or collision with another vessel in the area.

Vessel Traffic Service data indicates that the anchorage ground described in 33 CFR 110.196 is no longer used for the anchoring of large sea-going vessels, but that it is used infrequently by a handful of smaller vessels each year. The Coast Guard believes that those vessels that have been using the anchorage would be able to continue anchoring in the remaining portion of the anchorage area.

This proposed rule would move the “long side,” also known as the channel side, shoreward and adjacent to the federal channel, shortening this side from 5,000 feet to approximately 2725 feet. No other changes to the anchorage would be made. In order to eliminate confusion regarding the geographic boundary of the proposed anchorage, the current description would be replaced with geographic coordinates that would define the boundary of the anchorage. The proposed coordinates of the anchorage would be:

Latitude	Longitude
29°43'59.0" N	93°52'08.1" W
29°44'06.8" N	93°51'57.6" W
29°43'53.0" N	93°51'47.1" W
29°43'36.7" N	93°51'50.9" W

A chart depicting the proposed boundaries is included in the docket where indicated under **ADDRESSES**. The above coordinates would be the new west, north, east, and south corners of the anchorage, respectively.

The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed 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.

##### **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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on current information, which indicates that the anchorage area is rarely used, and that the overall reduction in anchorage area would not significantly impact those vessels desiring to use the anchorage.

##### **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 proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination 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 proposed rule involves the reduction of size of the Sabine Pass Channel anchorage ground. It is categorically excluded from further review under paragraph L59(b) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01,

Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

## **List of Subjects in 33 CFR Part 110**

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33

CFR part 110 as follows:

**PART 110—ANCHORAGE REGULATIONS**

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1;

Department of Homeland Security Delegation No. 0170.1.

2. In § 110.196, revise paragraph (a) to read as follows:

**§ 110.196 Sabine Pass Channel, Sabine Pass, TX.**

(a) The anchorage area. The water bounded by a line connecting the following coordinates:

<b>Latitude</b>	<b>Longitude</b>
29° 43' 59.0" N	93° 52' 08.1" W
29° 44' 06.8" N	93° 51' 57.6" W
29° 43' 53.0" N	93° 51' 47.1" W
29° 43' 36.7" N	93° 51' 50.9" W

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Dated: December 3, 2018.

Paul F. Thomas,  
Rear Admiral, U.S. Coast Guard,  
Commander, Eighth Coast Guard District.  
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