



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG-2018-0486]

RIN 1625-AA00, 1625-AA111625-AA08

Revisions to Notification Procedures for Limited Access Areas and Regulated

Navigation Areas and Removal of Certain Marine Event and Limited Access Area

Regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise portions of our general regulation on the notification procedures for the establishment and disestablishment of limited access areas and regulated navigation areas, as well as to remove certain marine event and limited access area regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts. The proposed changes reflect current organizational procedures and post-promulgation changes in circumstances. 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-2018-0486 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 Courtney Mallon, Coast Guard; telephone 202–372–3758, email *courtney.mallon@uscg.mil*.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

The Coast Guard views 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 <https://www.regulations.gov>. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule 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 submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

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

II. Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LNG	Liquefied natural gas
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

III. Background, Purpose, and Legal Basis

The Coast Guard is proposing to remove certain marine event and limited access area regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts. The proposed changes would remove regulations for events that are no longer held or are no

longer needed to ensure the safety of participants and the public. As part of this rulemaking, the Coast Guard is also proposing to revise our regulation on the notification procedures for the establishment and disestablishment of limited access areas and regulated navigation areas. These proposed amendments reflect changes in agency administrative process and would provide increased transparency and clarity. The Coast Guard identified these proposed changes as part of the agency's deregulation effort under Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 13777 (Enforcing the Regulatory Reform Agenda Deregulatory Process), and associated guidance issued in 2017.

The Coast Guard is conducting this rulemaking under the authority of 46 U.S.C. 70041 in regard to changes to 33 CFR part 100; and 46 U.S.C. 70034 in regard to changes to 33 CFR part 165. The Secretary of the Department of Homeland Security (DHS) has delegated authority to exercise general powers for the purpose of executing duties and functions of the Coast Guard to the Commandant via Department of Homeland Security Delegation No. 0170.1(II)(23). The Secretary has delegated ports and waterways authority, with certain reservations not applicable here, to the Commandant via DHS Delegation No. 0170.1(II)(70). The Commandant has further redelegated these authorities within the Coast Guard as described in 33 CFR 1.05-1.

IV. Discussion of Proposed Rule

A. 33 CFR Part 100—Safety of Life on Navigable Waters

Ninth District

The Coast Guard is proposing to remove a recurring Ninth Coast Guard District special local regulation in 33 CFR 100.905 for the “Door County Triathlon; Door

County, WI.” The Door Country Triathlon event is located in a low traffic, no commercial traffic, safe harbor that has no public access outside of the event start and finish areas controlled by the event sponsor. The surrounding water access is private property; there is no public access for uncontrolled spectators. Removal of the regulation would not affect public safety. The local sheriff and Department of Natural Resources are normally on scene and boating traffic in the area is recreational only.

Thirteenth District

The Coast Guard is proposing to remove 33 CFR 100.1308, “Special Local Regulation; Hydroplane Races within the Captain of the Port Puget Sound Area of Responsibility.” The Lake Sammamish and Dyes Inlet areas, which are covered by 33 CFR 100.1308(a)(1) and (3), have not been in use for over 3 years. Although events still occur in the Lake Washington area, which are covered by 33 CFR 100.1308(a)(2), removing this regulation would not affect the safety of participants or spectators. The safety of participants and spectators for events occurring in Lake Washington is ensured through 33 CFR 100.1301, “Seattle seafair unlimited hydroplane race.”

B. 33 CFR Part 165—Regulated Navigation Areas and Limited Access Areas

General Regulations

The Coast Guard is proposing to amend the general notice provisions for regulated navigation areas and limited access areas by removing paragraph (c) from 33 CFR 165.7. The removal of paragraph (c) would eliminate the statement that notification of termination of a safety zone, security zone, or regulated navigation area is usually made in the same form as notification of its establishment. This would not change how, in practice, the Coast Guard notifies the public of regulated navigation areas and limited

access areas. The Coast Guard would continue to provide notification, as currently conducted, in accordance with 33 CFR 165.7(a)—generally by **Federal Register** publication and supplemental notification via marine broadcasts, local notice to mariners, and local media. The proposed elimination of paragraph (c) is to account for the fact that the language of the paragraph, specifically the use of the term “termination,” is ambiguous. It could mean either the end of the rule’s effective period or the end of the rule’s enforcement period. While the end of the effective period for the rule might be the same as the end of the enforcement period, this is not always the case. In the event a marine event terminates earlier than expected, the local COTP will often make the decision to terminate enforcement of the zone(s) before the close of the rule’s effective date. While the potential for this course of action is discussed in the implementing rulemaking document, there is typically no follow-up in the **Federal Register** stating that such enforcement has ceased. Rather, in actual practice, this information is communicated solely through marine broadcasts, local notice to mariners, or other means known to be routinely referenced by the local marine community.

Seventeenth District

The Coast Guard is proposing to remove 33 CFR 165.1709, “Security Zones; Liquefied Natural Gas Tanker Transits and Operations at Phillips Petroleum LNG Pier, Cook Inlet, AK.” The liquefied natural gas (LNG) terminal in Cook Inlet has ceased operations for the foreseeable future. No tankers have called on it since 2015. The proposed LNG pipeline scheme for the future would re-route LNG production to Valdez, assuming the price rises to profitable levels. In the event that LNG resumes flow to Cook Inlet, a new rule would be appropriate, as the facility name might be different.

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, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this proposed rule a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this proposed rule is not a significant regulatory action, it is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled "Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017).

The Coast Guard proposes to revise its regulations to provide updates and

clarifications to existing regulatory text in 33 CFR parts 100 and 165. The revisions include administrative changes such as clarifying edits to general regulations on notice of termination of areas regulated under 33 CFR part 165, and the removal of a special local regulation no longer needed for safety, a special local regulation for an event that is no longer held, and a security zone for a facility that has ceased operations. Normal navigation rules sufficiently cover the safety of participants and spectators at events that are no longer suitable for coverage under a special local regulation. This proposed rule would not impose any additional costs on the public, maritime industry, or the government. The qualitative benefit of these proposed changes would be an increase in the clarity of regulations created by editorial corrections, the removal of expired enforcement periods, and the removal of events that are no longer held.

B. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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.

This proposed rule would not have any economic impact on vessel owners or operators, or any other maritime industry entity. The proposed changes include administrative changes relating to internal agency practices and procedures. Therefore, the proposed rule would not have a significant economic impact on any small entities. Thus, 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 proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed 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 in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. 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 proposed rule calls for no new or modified collection of information under

the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

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

G. Taking of Private Property

This proposed 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 proposed 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 proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would 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 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.

K. *Energy Effects*

We have analyzed this proposed 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 proposed rule under Department of Homeland Security Management 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 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. A preliminary 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.

This proposed rule would be categorically excluded under paragraphs L54, L55, and L61 of Appendix A, Table 1 of DHS Instruction Manual 023-1-001-01, Rev. 1. Paragraph L54 pertains to promulgation of regulations that are editorial or procedural;

paragraph L55 pertains to internal agency functions; and paragraph L61 pertains to special local regulations issued in conjunction with a regatta or marine parade. This proposed rule would revise general rulemaking regulations and also amend the field regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts by incorporating updates and clarifications to existing regulatory text in 33 CFR parts 100 and 165.

These proposed regulation changes were identified as part of the Coast Guard's deregulation identification process required by Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), and Executive Order 13777 (Enforcing the Regulatory Reform Agenda Deregulatory Process), and associated guidance issued in 2017. All of the proposed changes are consistent with the Coast Guard's maritime safety and stewardship missions. We seek any comments or information that may lead to the discovery of a significant environmental impact associated with this proposed rule.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons stated in the preamble, the Coast Guard is proposing to amend 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

§ 100.905 [Removed]

2. Remove § 100.905.

§ 100.1308 [Removed]

3. Remove §100.1308.

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS**

4. 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.

§ 165.7 [Amended]

5. Amend § 165.7 by removing paragraph (c).

§ 165.1709 [Removed]

6. Remove § 165.1709.

Dated: March 3, 2020

R. V. TIMME,
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Prevention Policy.

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