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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG-2018-0486]

RIN 1625-AA00, 1625-AA08, 1625-AA11, and 1625-AA87

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: Final rule.

SUMMARY: The Coast Guard is revising portions of our general regulation on the notification procedures for the establishment and disestablishment of limited access areas and regulated navigation areas, to reflect current organizational procedures. This rule also removes certain marine event and limited access area regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts because they are no longer needed.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0486 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: For information about this document

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SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LNG	Liquefied natural gas
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

II. Basis and Purpose, and Regulatory History

The Coast Guard is removing certain marine event and limited access area regulations for the Ninth, Thirteenth, and Seventeenth Coast Guard Districts. The changes remove regulations for events that are no longer held or regulations that are no longer needed to ensure the safety of participants and the public. As part of this

rulemaking, the Coast Guard is also revising our regulation on the notification procedures for the establishment and disestablishment of limited access areas and regulated navigation areas. These amendments reflect changes in agency administrative process and 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 issued a notice of proposed rulemaking for this action on March 9, 2020, at 85 FR 13598, in which we invited public comment on the proposal. The comment period closed on April 8, 2020. We received no comments on the proposal.

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.

III. Discussion of the Rule

As stated above, we received no comments on the notice of proposed rulemaking for this action published March 9, 2020 at 85 FR 13598. We are issuing, without change, the rule as we described it in the notice of proposed rulemaking.

A. 33 CFR PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Ninth District

The Coast Guard is removing 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, safe harbor with no commercial traffic. The safe harbor 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 will 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 removing 33 CFR 100.1308, “Special Local Regulation; Hydroplane Races within the Captain of the Port Puget Sound Area of Responsibility.” Section 100.1308 describes three restricted areas. 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 will not affect the safety of participants or spectators because those events are also covered by 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 amending 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) eliminates 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 does not change how, in practice, the Coast Guard notifies the public of regulated navigation areas and limited access areas.

The regulations in 33 CFR part 165 are established through rulemaking which involves one or more documents being published in the **Federal Register**. In certain situations, a rule will be issued and made effective before it can be published in the **Federal Register**. The Coast Guard will continue to provide notification of safety zone, security zone, and regulation navigation area regulations 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 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.

In the event that 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 stated effective period. While the potential for this course of action is discussed in the implementing rulemaking document, there is typically not time to publish a statement in the **Federal Register** that such enforcement has ceased. Rather, in actual

practice, this information is communicated through marine broadcasts, local notice to mariners, or other means known to be routinely referenced by the local marine community. Also, the same methods will be used to announce that a not-yet-published rule has been issued to end the effective period of the initial rule.

Seventeenth District

The Coast Guard is removing 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. In the event that LNG vessel traffic resumes to Cook Inlet, a new rule would be appropriate.

IV. 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. 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 rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule 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). A regulatory analysis (RA) follows.

The Coast Guard is revising 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 rule does not impose any additional costs on the public, maritime industry, or the government. The qualitative benefit of these changes is 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. 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” 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 rule does not have any economic impact on vessel owners or operators, or any other maritime industry entity. The changes include administrative changes relating to internal agency practices and procedures. The rule does not have a significant economic impact on any small entities. Therefore, 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.

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.

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

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 and Incorporation by Reference

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, 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 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 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 rule is categorically excluded under paragraphs L54, L55, and L61 of Appendix A, Table 1 of DHS Instruction Manual 023-001-01, Rev. 1.¹ 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

¹ https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.

regulations issued in conjunction with a regatta or marine parade. This rule revises general rulemaking regulations and also amends 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 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 changes are consistent with the Coast Guard's maritime safety and stewardship missions.

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 discussed in the preamble, the Coast Guard amends 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: July 22, 2020

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

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