



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0525]

RIN 1625-AA00

Safety Zone; Victoria Barge Canal, Victoria, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for parts of the navigable waters of the Victoria Barge Canal from approximate position 28°30'49"N, 096°48'08"W to approximate position 28°31'48"N, 096°48'172"W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with SH-35 bridge fender repair operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 5 p.m. on September 19, 2020. For purposes of enforcement, actual notice will be used 7 a.m. on August 31, 2020 through [INSERT 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-2020-0525 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 Lieutenant Commander Margaret Brown, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361-939-5130, email Margaret.A.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	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 (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 the public interest because immediate action is needed to respond to the potential safety hazards associated with the damaged fenders on the SH-35 Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) is establishing a temporary safety zone for parts of the navigable waters of the Victoria Barge Canal from approximate position 28°30'49"N, 096°48'08"W to approximate position 28°31'48"N, 096°48'172"W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with SH-35 bridge fender repair operations.

IV. Discussion of the Rule

This rule establishes a temporary safety zone August 31, 2020 through September 19, 2020, from 7 a.m. through 12 p.m. and 1 p.m. through 5 p.m. each day, Monday through Saturday and will be enforced during SH-35 bridge fender repairs. No vessel or person is permitted to enter the temporary safety zone during the enforcement period without obtaining permission from the COTP or a designated representative.

Persons or vessels seeking to enter the safety zone must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 361-939-0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone covers an area of the navigable waters of the Victoria Barge Canal from approximate position 28°30’49”N, 096°48’08”W to approximate position 28°31’48”N, 096°48’172”W for the purposes of SH-35 bridge fender repairs August 31, 2020 through September 19, 2020, from 7 a.m. through 12 p.m. and 1 p.m. through 5 p.m. each day, Monday through Saturday. Moreover, the Coast Guard will issue Local Notices to Mariners, Safety Marine Information Broadcasts, and Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

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 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 (Public Law 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 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 establishment of a temporary safety zone for navigable waters of Victoria Barge Canal from approximate position 28°30'49"N, 096°48'08"W to approximate position 28°31'48"N, 096°48'172"W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with SH-35 bridge fender repair operations. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.T08-0525 to read as follows:

§ 165.T08-0525 Safety Zone; Victoria Barge Canal, Victoria, TX

(a) *Location.* The following area is a safety zone: all navigable waters of the Victoria Barge Canal from approximate position 28°30'49"N, 096°48'08"W to approximate position 28°31'48"N, 096°48'172"W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with SH-35 bridge fender repair operations.

(b) *Effective period.* The section is effective August 31, 2020 through September 19, 2020, from 7a.m. through 12p.m. and 1p.m. through 5 p.m. each day, Monday through Saturday.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative.

(2) Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF-FM channel 16 or by telephone at 361-939-0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: September 1, 2020

J. B. Gunning

Captain, U.S. Coast Guard,

Acting Captain of the Port Sector Corpus Christi.

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