



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0651]

RIN 1625-AA00

Safety Zone; Houston Ship Channel, Houston, TX

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 1,000 foot radius of the deadship tow of the Battleship Texas while it transits from its current location at San Jacinto Park on the Houston Ship Channel to its drydock location on the Galveston Channel. The safety zone is needed to ensure the safety of other waterway users. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Houston-Galveston. Tug and barge traffic will be authorized to transit through the safety zone in the barge lanes, with no meeting or overtaking of other tug and barge traffic, with Vessel Traffic Service approval.

DATES: This rule is effective from 6 a.m. through 9 p.m. on August 31, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0651 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 MST1 Christopher Morgan, Sector Houston-Galveston Waterways

Management Division, U.S. Coast Guard; telephone 281-464-4780, email

houstonwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
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. The Coast Guard must establish this safety zone by August 31, 2022, and lacks 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 towing a World War I era vessel down the Houston Ship Channel and Galveston Channel.

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 Houston-Galveston (COTP) has determined that potential hazards associated with the deadship tow of the Battleship Texas on August 31, 2022 in the Houston Ship Channel and Galveston Channel, will be a safety concern for anyone within the area of the transit. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within these areas during the deadship tow.

IV. Discussion of the Rule

This rule establishes a safety zone from 6 a.m. until 9 p.m. on August 31, 2022. The safety zone will cover a 1,000 foot radius of the Battle Ship Texas deadship tow while it transits the Houston Ship Channel and Galveston Channel. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the deadship tow occurs. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Tug and barge traffic will be authorized to transit through the safety zone in the barge lanes, with no meeting or overtaking of other tug and barge traffic, with Vessel Traffic Service approval.

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 duration and size of the safety zone. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule will allow tug and barge traffic to seek permission to enter the zone while the tow is underway.

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 call or email 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.

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, 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 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 a safety zone encompassing a 1,000 foot radius of the Battleship Texas while it is under tow within the Houston Ship Channel and Galveston Channel. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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

Harbours, Marine safety, Navigation, 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. 00170.1, Revision No. 01.2.

2. Add § 165.T08-0651 to read as follows:

§ 165.T08-0651 Safety Zone; Houston Ship Channel, Houston, TX.

(a) *Location.* The following area is a safety zone during specified conditions: All navigable waters within a 1,000 foot radius of the deadship tow of the Battleship Texas while the vessel transits the Houston Ship Channel and Galveston Channel.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Houston-Galveston (COTP) or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by 281-464-4780, or email at houstonwwm@uscg.mil. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) Tug and barge traffic will be authorized to transit through the safety zone in the barge lanes, with no meeting or overtaking of other tug and barge traffic, with Vessel Traffic Service approval.

(c) *Enforcement period.* The safety zone remains in effect from 6 a.m. until 9 p.m. on August 31, 2022, until the Battleship Texas is moored at the drydock facility on the Galveston Channel.

Dated: August 22, 2022.

J.E. Smith,

Captain, U.S. Coast Guard,

Captain of the Port,

Houston-Galveston.

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