



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0269]

RIN 1625-AA00

Safety Zone; Heavy Weather and Natural or Other Disasters in San Juan Captain of the Port Zone, Sector San Juan

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone to be enforced in the event of hurricanes, tropical storms, and other disasters in the San Juan Captain of the Port (COTP) Zone. This action is necessary to ensure the safety of the waters of the San Juan COTP zone. This regulation establishes actions to be completed by parties operating on and around the navigable waterways of the San Juan COTP zone. This may include the owners and operators, and those in management and control positions of regulated facilities, waterfront facilities, and vessels, prior to landfall of hurricanes, tropical storms, and other disasters threatening the San Juan COTP Zone.

DATES: This 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-2023-0269 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 about this rule, call or email Lieutenant Commander (LCDR) Carlos M. Ortega-Pérez, the Waterways Management Division Chief, Sector San Juan Prevention Department, U.S. Coast Guard; telephone 787-729-2380, email Carlos.M.Ortega-Perez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
CFR	Code of Federal Regulations
CWA	Clean Water Act
DHS	Department of Homeland Security
FR	Federal Register
MTSA	Maritime Transportation Security Act
NPRM	Notice of proposed rulemaking
OPA90	The Oil Pollution Act of 1990
PWSA	Ports and Waterways Safety Act
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

During the hurricane season Puerto Rico and the Virgin Islands face different security and life-threatening challenges that directly affect the safety and continuity of operations of the Sector’s waterways and port facilities. To ensure the safety of the port and life on navigable waters of the United States this regulation restricts movement of vessels and barges over 500 gross tons (GT) in the event of heavy weather conditions or any natural or other disasters anticipated to affect the San Juan Captain of the Port (COTP) zone. The COTP has determined that reduced or restricted visibility and gale force winds which may occur during heavy weather periods and other disasters affecting Puerto Rico and the U.S. Virgin Islands, constitutes a safety concern for the navigable waters and waterfront facilities within the San Juan COTP zone.

In response, on June 13, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, “Safety Zone: Heavy Weather and Natural or Other Disasters

in San Juan Captain of the Port Zone, San Juan, PR.”¹ There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this heavy weather or other disasters. During the comment period that ended June 29, 2023, we received no comments.

While there were no comments, a similar NPRM was published for the Key West COTP zone which garnered two public comments.² The Coast Guard made changes to the regulatory text in the final rule for the Key West COTP zone³ for clarity in response to the comments received. In this final rule, the Coast Guard made similar changes in the regulatory text for consistency with the Key West COTP zone. See 33 CFR 165.707.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The purpose of this rule is to protect the general maritime public, to include vessel owners, vessel operators, and those in management and control positions related to facilities and waterways regulated by the Coast Guard, along with those in management and control positions related to any land or shore area immediately adjacent to those waterways in the San Juan COTP zone, in the event of a hurricane, tropical storm, and other natural disasters.

IV. Discussion of Comments, Changes, and the Rule

As a general matter, this rule is intended to inform the general maritime public, to include vessel owners and operators, regulated facilities, and waterfront facilities of the Coast Guard’s expectations in the event of a hurricane, tropical storm, or other disaster, thereby expediting the enforcement of the safety zone, and providing more advanced notice of the Coast Guard’s expectations in the event of a hurricane, tropical storm, or other natural disaster. This rule is also intended to provide vessel owners and operators,

¹ 88 FR 38413.

² 88 FR 27421.

³ See Final rule titled, “Safety Zone; Atlantic Ocean, Key West, FL” (88 FR 76133).

along with the owners and operators of regulated facilities and waterfront facilities with a deeper understanding of how the Coast Guard intends to handle extreme weather-related events so they can plan accordingly.

As noted in the previous section, we received no comments on our NPRM published June 13, 2023. However, due to the thorough review done during the similar NPRM published for the Sector Key West COTP zone, we have determined that there are several changes in the final rule's regulatory text for 33 CFR 165.791 as follows.

To clarify some potential confusion, the Coast Guard is adding two definitions for "regulated facilities," and "waterfront facilities," in paragraph(a). The Coast Guard has the authority to regulate facilities and land structure or shore area immediately adjacent to navigable waters under certain, specific statutory and regulatory frameworks. We are adding a definition for "regulated facilities" to clarify the regulated facilities covered by this rule are those regulated under the Ports and Waterways Safety Act,⁴ Maritime Transportation and Security Act (MTSA),⁵ Clean Water Act,⁶ and the Oil Pollution Act of 1990.⁷ These statutes give the Coast Guard the authority and jurisdiction to take certain actions on certain regulated facilities that have a maritime nexus. We are adding a definition for "waterfront facilities" which will include any land structure or shore area immediately adjacent to the navigable waters of the San Juan COTP zone.

When the safety zone is subject to enforcement it will be determinate of conditions set forth in paragraphs (c)(1) through (c)(5). In paragraphs (c)(1), we are deleting "port facilities" and adding in its place, "regulated facilities and waterfront facilities" for consistency as definitions for these terms have been added in paragraphs (b)(6) and (b)(7). In the event Port Condition WHISKEY is set, all vessels, regulated facilities, and waterfront facilities within the San Juan COTP zone would have to comply

⁴ 46 USC 70001 *et seq.*

⁵ 46 USC 70101 *et seq.*

⁶ 33 USC 1251 *et seq.*

⁷ 33 USC 2701 *et seq.*

with the applicable regulations in paragraph (c)(1). Additionally, in paragraph (c)(1), we removed the sentence, “Vessels wishing to remain in port are required to submit an application to the COTP prior to setting Port Condition X-Ray.” In its place, we are adding the sentence, “Oceangoing vessels greater than 500 gross tons (GT) intending to remain in the port during Port Condition Whiskey must contact the San Juan COTP prior to the setting of port condition X-Ray.” We are taking this action to prevent vessel owners and operators from having to generate additional documentation.

In paragraphs (c)(2), we are deleting “port facilities” and adding in its place, “regulated facilities and waterfront facilities” for consistency as definitions for these terms have been added in paragraphs (a)(7) and (a)(8). In the event Port Condition X-RAY is set, all vessels, regulated facilities, and waterfront facilities within the San Juan COTP zone would have to comply with the applicable regulations in paragraph (c)(2). Additionally, in paragraph (c)(2), we are deleting the sentence, “The COTP may require additional precautions to ensure the safety of the ports and waterways” because it is overly vague and may cause undue confusion for owners and operators of vessels and regulated facilities.

In paragraph (c)(3), we clarified we are only limiting cargo operations at “regulated facilities.” We also removed some the language that went into specifics of cargo operations. Removing the language made the regulatory text more succinct, as the initial language contained unnecessary redundancies. We also clarified that only facilities regulated under the MTSA will be required to operate in accordance with their security plan.

In paragraph (c)(4), we are removing the words “are suspended” and replacing it with, “must cease all cargo operations” because the phrase “are suspended” may be confusing in this context. By using the phrase “must cease all cargo operations” we are making it clear to the regulated parties that cargo operations must stop when Port ZULU

is set.

In paragraph (c)(7), we are revising the text to clarify that the Coast Guard Sector San Juan will notify the maritime community, “to the furthest extent practicable” of the periods which the safety zone in paragraph (a) will be subject to enforcement via Broadcast Notice to Mariners or by on-scene designated representatives.

Lastly, we are making non-substantive editorial changes and revising terminology for consistency throughout the final rule regulatory text.

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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the following reasons: (1) Vessel traffic and facilities will be impacted by this rule only during limited times while heavy weather or other disaster is expected to impact the Sector San Juan COTP zone; (2) vessel traffic would be secured only during port conditions Yankee and Zulu, and only in port areas potentially affected by gale force winds; and (3) the Coast Guard would issue updates on <https://homeport.uscg.mil/port-directory/san-juan>, Broadcast Notice to Mariners, and during Port Coordination meetings.

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 received no comments from the Small Business Administration on this rulemaking. 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 of limited duration implemented during heavy weather events e.g., tropical storms, hurricanes, or other natural disasters where a safety zone implementation is deemed appropriate by the COTP. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. 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.

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

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: Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.791 to read as follows:

§ 165.791 Safety Zones; Heavy Weather and Natural or Other Disasters in San Juan Captain of the Port Zone.

(a) *Location.* The following area is a safety zone: All navigable waters, as defined in 33 CFR 2.36, within Sector San Juan Captain of the Port (COTP) zone, San Juan, Puerto Rico, as described in 33 CFR 3.35-25, during specified conditions.

(b) *Definitions.* As used in this section:

(1) *Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP San Juan in the enforcement of the safety zone.

(2) *Gale force winds* means sustained surface winds, or frequent gusts, of 34 knots (39 mph) or more usually seen in coastal regions.

(3) *Port Condition WHISKEY* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 72 hours.

(4) *Port Condition X-RAY* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 48 hours.

(5) *Port Condition YANKEE* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 24 hours.

(6) *Port Condition ZULU* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 12 hours.

(7) *Regulated facilities* means shoreside facilities regulated by the Coast Guard under the Ports and Waterways Safety Act,⁸ Maritime Transportation and Security Act,⁹ Clean Water Act,¹⁰ and the Oil Pollution Act of 1990,¹¹ and regulations in 33 CFR parts 105, 154, 156, and 158.

⁸46 USC 70001 *et seq.*

⁹46 USC 70101 *et seq.*

¹⁰33 USC 1251 *et seq.*

¹¹33 USC 2701 *et seq.*

(8) *Waterfront facilities* means any land structure or shore area immediately adjacent to the navigable waters of the San Juan COTP zone.

(c) *Regulations.* (1) *Port Condition WHISKEY.* All vessels, regulated facilities, and waterfront facilities within the San Juan COTP zone must exercise due diligence in preparation for potential storm impacts. All regulated facilities and waterfront facilities must begin removing all debris and securing potential flying hazards. Oceangoing vessels greater than 500 gross tons (GT) must make plans to depart no later than the setting of Port Condition Yankee unless authorized by the COTP. Oceangoing vessels greater than 500 GT intending to remain in port must contact the COTP prior to the setting port condition X-Ray.

(2) *Port Condition X-RAY.* All vessels, regulated facilities, and waterfront facilities within the San Juan COTP zone must ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Vessels greater than 500 GT without an approval to remain in port must depart prior to the setting of Port Condition YANKEE. Vessels with the COTP's permission to remain in port must implement their pre-approved mooring arrangement. Regulated facilities must prepare to terminate all cargo operations.

(3) *Port Condition YANKEE.* Affected ports are closed to inbound vessel traffic. All oceangoing vessels greater than 500 GT must have departed designated ports within the San Juan COTP zone. Regulated facilities must terminate all cargo operations, not associated with storm preparations, unless specifically authorized by the COTP. All MTSA regulated facilities must continue to operate in accordance with their approved Facility Security Plans and comply with the requirements of the MTSA.

(4) *Port Condition ZULU.* The port is closed to all vessel traffic except as specifically authorized by the COTP. Regulated facilities must cease all cargo

operations, including bunkering and lightering. Waivers may be granted except for when Cargo of Particular Hazard or Certain Dangerous Cargo are involved.

(5) *Emergency Regulation for Other Disasters.* Any natural or other disasters that are anticipated to affect the Sector San Juan COTP zone will result in the prohibition of facility operations and vessel traffic transiting or remaining in the affected port.

(6) *Transit requests.* Persons and vessels desiring to enter, transit through, anchor in, or remain in the regulated area may contact the COTP via telephone at (787) 289-2041, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(7) *Safety zones notice.* Coast Guard Sector San Juan will notify the maritime community, to the furthest extent practicable, of the periods during which the safety zone described in paragraph (a) will be subject to enforcement via Broadcast Notice to Mariners or by on-scene designated representatives.

Dated: April 1, 2024.

Robert M. Pirone,
Captain, U.S. Coast Guard,
Alternate Captain of the Port, Sector San Juan.
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