



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0914]

RIN 1625-AA00

Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX

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

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is extending the period of a temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. This action is necessary to provide protection to the levee protection wall located at the north end of the turning basin until permanent repairs can be affected. This rule prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative.

DATES: The effective period of § 165.T08-0914 is extended through September 30, 2027. The amendments in this rule are effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through September 30, 2027. Comments are due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For instructions on submitting comments, see section VI of the **SUPPLEMENTARY INFORMATION**. To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2017-0914 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 Lieutenant Sean Yanez, Marine Safety Unit Port Arthur, TX, U.S. Coast Guard; telephone 571-610-0193, email sean.p.yanez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port, Marine Safety Unit Port Arthur
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
USACE	U.S. Army Corps of Engineers
U.S.C.	United States Code

II. Background Information and Regulatory History

On August 14, 2017, the Coast Guard established this temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX. That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts. On July 18, 2018, the Coast Guard published the temporary final rule establishing the safety zone until January 31, 2023 (83 FR 33842). In August 2022, the USACE informed the Coast Guard that permanent repairs to the flood protection wall would not be completed for another two years. The Coast Guard extended the effective period of the temporary safety zone through January 31, 2025 (87 FR 73256, November 29, 2022).

In October 2024, the USACE informed the Coast Guard that permanent repairs to the flood protection wall would not be completed until 2027. The Coast Guard must extend the effective period of the temporary safety zone through September 30, 2027. It would be impracticable to publish an NPRM because the safety zone must be extended prior to January 31, 2025.

The Coast Guard is issuing this temporary interim rule under the authority in 5 U.S.C. 553(b)(B). This statutory 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.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. It is impracticable because this safety zone must be extended by January 31, 2025, to provide for the safety of life on the navigable waters during levee protection repair work, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Also, 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 temporary interim rule would be impracticable because it is necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts.

Although this regulation is published as an interim rule without prior notice, public comment is nevertheless desirable to ensure that the regulation is both workable and reasonable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

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, MSU Port Arthur (COTP) has determined that potential damage to temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the

surrounding community. The USACE has requested, and the Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed.

IV. Discussion of the Rule

On August 14, 2017, the Coast Guard established a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX. That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts. This safety zone was extended in November of 2022, this temporary rule further extends the effective date of these safety zones until September 30, 2027.

No vessel or person is permitted to enter or remain in the safety zone without obtaining permission from the COTP or a designated representative of the COTP. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of the COTP. To seek permission to enter, contact the COTP or a designated representative via VHF-FM channel 16, or through Marine Safety Unit Port Arthur at 409-719-5070. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

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 size, location, duration and entities impacted by the safety zone. This safety zone affects approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29° 50’57.45N. A facility receives vessels within this zone and that facility would be permitted to receive vessels based on previously agreed to maneuvering calculations and plans.

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 (Pub. L. 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 extending the effective period of the temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. It is categorically excluded from further review under paragraph L[60(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.

VI. Public Participation and Request for Comments

We view 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.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2017-0914 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in the docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of this rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more information about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records Notice (85 FR 14226, March 11, 2020).

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, 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. Amend § 165.T08-0914 by revising paragraph (d) to read as follows:

§ 165.T08-0914 Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX.

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(d) *Enforcement date.* The safety zone in paragraph (a) of this section will be enforced from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through September 30, 2027. It will be subject to enforcement the entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: December 20, 2024.

Anthony R. Migliorini,

Captain, U.S. Coast Guard,

Captain of the Port Marine Safety Unit Port Arthur.

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