



**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, DHS.

**ACTION:** Notice of proposed rulemaking.

---

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. This action is necessary to provide protection for the levee and temporary protection wall located at the north end of the turning basin until permanent repairs can be effected. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 60 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 <http://www.regulations.gov>, type USCG-2017-0914 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 rulemaking, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409-719-5086, email scott.k.whalen@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

|        |                                  |
|--------|----------------------------------|
| CFR    | Code of Federal Regulations      |
| COTP   | Captain of the Port, Port Arthur |
| DHS    | Department of Homeland Security  |
| FR     | <i>Federal Register</i>          |
| 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 a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX<sup>1</sup>. That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts. The U. S. Army Corps of Engineers (USACE) and the local drainage district initiated and completed emergency repairs to protect against potential storm surge during hurricane season. Permanent repairs to the flood protection wall are now necessary. They are extensive and are expected to take approximately five to seven years. Damage to the 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

---

<sup>1</sup> See the temporary final rule titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX, Docket No. USCG-2017-0797.

Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed.

The purpose of this rulemaking is to ensure the safety of the surrounding community and to protect persons, vessels, and the environment during permanent repairs to the Taylor Bayou Turning Basin flood protection wall. Therefore, the Coast Guard proposes to establish a temporary safety zone until permanent repairs are completed. The Coast Guard proposes this rulemaking under the authority of 33 U.S.C. 1231.

### **III. Discussion of the Proposed Rule**

The Coast Guard proposes to establish a temporary safety zone for navigable waters of Taylor Bayou Turning Basin north of latitude 29° 50'57.45"N until January 31, 2023. The duration of the zone is intended to endure the safety of persons, vessels, and the environment until permanent repairs to the flood protection system are completed. No person or vessel would be permitted to enter the safety zone without obtaining permission from the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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, duration, and entities impacted by the safety zone. The safety zone affects approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29° 50’57.45”N. Only one 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 rulemaking will not have a significant economic impact on vessel owners or operators.

If you think that your business, organization, or governmental jurisdiction

qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the rulemaking 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rulemaking 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 proposed 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 rulemaking 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this rulemaking elsewhere in this preamble.

#### F. Environment

We have analyzed this rulemaking under Department of Homeland Security Directive 023-01, 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 preliminary 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. This proposed rule involves establishing a temporary safety zone that would prohibit persons and vessels from entry into waters on the upper reaches of Taylors Bayou Turning Basin unless authorized by the Captain of the Port Port Arthur (COTP) or a designated representative. Normally such actions are categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is

available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environment impact from this proposed rule.

#### 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.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during this 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If our material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **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 proposes to amend 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:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.2.

2. Add §165.T08-0914 to read as follows:

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

(a) Location. The following area is a safety zone: navigable waters of Taylor Bayou Turning Basin north of latitude 29° 50'57.45"N. These coordinates are based on WGS 84.

(b) Definition. As used in this section, a designated representative means a Coast Guard coxswain, officer or petty officer, or a federal, state or local officer designated by or assisting the Captain of the Port Port Arthur (COTP) in the

enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in §165.23 of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative.

(2) To request permission to enter, contact COTP or a designated representative on VHF-FM channel 16, or contact Vessel Traffic Service (VTS) Port Arthur on VHF-FM channel 65A or by telephone at 409-719-5070. Those persons or vessels permitted to enter the safety zone must comply with all lawful directions given by the COTP or a designated representative.

(d) Enforcement date. This section will be enforced from June 1, 2018 through January 31, 2023.

Dated: March 14, 2018.

**TWOMEY, JACQUELINE,**

*Captain, U.S. Coast Guard,*

*Captain of the Port Marine Safety Unit Port Arthur.*

[FR Doc. 2018-07865 Filed: 4/13/2018 8:45 am; Publication Date: 4/16/2018]