



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0962]

RIN 1625-AA00

Safety Zone; NASA Activities, Gulf of Mexico, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary, moving safety zone for all navigable waters within a 1000-yard radius of the National Aeronautics and Space Administration's (NASA's) crew module uprighting system test article while it is being tested in the territorial waters of the Gulf of Mexico off the coast of Galveston, TX. The safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards created by vessels and equipment engaged in the crew capsule's at-sea testing. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Houston-Galveston 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 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-

0962 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Collin Sykes, Eighth Coast Guard District, Waterways Management Division, U.S. Coast Guard; telephone 504-671-2119, email Collin.T.Sykes@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
CMUS	Crew module uprighting system
COTP	Captain of the Port Sector Houston-Galveston
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NASA	National Aeronautics and Space Administration
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The National Aeronautics and Space Administration’s (NASA’s) Orion program is evaluating an updated design to the crew module uprighting system (CMUS), the system of five airbags on top of the crew capsule that inflate upon splashdown. NASA tested the CMUS at the Neutral Buoyancy Lab at NASA’s Johnson Space Center in Houston, and requested Coast Guard support for the at-sea uprighting tests. The at-sea testing will involve numerous surface vessels, divers, and remote-operated submarine vehicles, and features a rapid rotation of the Orion test article in a confined area and partially controlled environment. Due to the complexity of the test and proximity of the

participants, unauthorized access by persons or vessels outside the scope of the test present a significant hazard to human life, vessels, and government property. The Captain of the Port Sector Houston-Galveston (COTP) has determined that this rule is needed to protect persons, vessels, and the marine environment on the navigable waters within the safety zone during the test.

The purpose of this rulemaking is to ensure the safety of persons, vessels, and the marine environment on the navigable waters within a 1000-yard radius of the CMUS test article before, during, and after the scheduled testing activities.

The Coast Guard is issuing this notice of proposed rulemaking (NPRM) with a 15-day prior notice and opportunity to comment pursuant to section (b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 553). Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for publishing this NPRM with a 15-day comment period because it is impractical to provide a 30-day comment period. It is impracticable to publish an NPRM with a 30-day comment period because we must establish this temporary safety zone by November 28, 2018. A 15-day comment period would allow the Coast Guard to provide for public notice and comment, but also publish a rule, if adopted, soon enough that the length of the notice and comment period does not compromise public safety.

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary, moving safety zone that would cover all navigable waters within 1000 yards of NASA's CMUS test article, which will be located in the territorial waters of the Gulf of Mexico off the coast of Galveston, TX. NASA anticipates that the testing activities will take place on approximately three days

during the effective period, during daylight hours only. The effective period of this proposed rule covers a nine day window from November 28, 2018 through December 6, 2018, to allow for scheduling delays due to inclement weather or technical difficulties. On each of the approximately three days that the proposed rule would be enforced, the enforcement periods would begin approximately 2 hours before testing activities and last until approximately 2 hours after the testing activities. The COTP or a designated representative would inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), and/or other means of public notice, as appropriate, at least 3 hours in advance of each enforcement period. Such notice of enforcement would also include more specific information regarding the location of the CMUS test article.

The duration of the proposed zone is intended to protect persons, vessels, and the marine environment on these navigable waters during the NASA testing activities. No vessel or person would be permitted to enter or remain in the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is 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 in the enforcement of the safety zone. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the

COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times, dates, and locations, for this safety zone through BNMs, LNMs, and/or MSIBs, as appropriate. 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, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which would affect a small, designated area off the coast of Galveston, TX, outside of the Houston Ship Channel and safety fairway during daylight hours on approximately three days. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek

permission to enter 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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 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. 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 proposed rule would 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, 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 a temporary, moving safety zone that would prohibit entry within 1000 yards of the CMUS test article during daylight hours on approximately three days in the Gulf of Mexico. Normally, such actions are categorically excluded from further review under paragraph L60(a) 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 environmental 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 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your 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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://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 <https://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 is proposing 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. 0170.1.

2. Add § 165.T08-0962 to read as follows:

§ 165.T08-0962 Safety Zone; NASA Activities, Gulf of Mexico, Galveston, TX.

(a) Location. The following area is a safety zone: All navigable waters within 1000 yards of the National Aeronautics and Space Administration's (NASA's) crew module uprighting system test article.

(b) Effective period. This section will be effective from November 28, 2018 through December 6, 2018.

(c) Enforcement periods. This section will be enforced on approximately 3 days during the effective period, during daylight hours. Each period of enforcement will begin approximately 2 hours before testing activities and end approximately 2 hours after testing activities. The Captain of the Port Sector Houston-Galveston (COTP) or a designated representative will inform the public of the enforcement through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) or other means of public notice at least 3 hours in advance of the enforcement of this safety zone. Such notice of enforcement will also include more specific information regarding the location of the CMUS test article.

(d) 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 COTP or a designated representative. A designated representative is 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) in the enforcement of the safety zone. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(2) To seek permission to enter, contact the COTP or a designated representative by VHF Channel 16.

(3) If granted permission to enter, all vessels must transit at their slowest safe speed and comply with all lawful orders or directions of the COTP or a designated representative.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) or other means of public notice of the enforcement period for the temporary safety zone as well as any changes in the dates and times of enforcement.

Dated: October 16, 2018

Kevin D. Oditt,
Captain, U.S. Coast Guard,
Captain of the Port Sector Houston-Galveston.
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