



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**USCG-2019-0818**

**RIN 1625-AA00**

**Safety Zone; San Jacinto River, Channelview, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; request for comments.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I-10 bridge, just abreast of Buoy #14. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by salvage and over-water bridge repairs. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Houston-Galveston.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 24, 2019. For the purposes of enforcement, actual notice will be used from September 25, 2019, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must be received before [INSERT DATE 30 DAYS AFTER 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-2019-0818 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG-2019-0818 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comment” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0818 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 rule, call or email LCDR Sarah Rousseau, Sector Houston-Galveston Waterways Management Division, U.S. Coast Guard; telephone 281-464-4736, email Sarah.K.Rousseau@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
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 and contrary to the public interest. We must establish this safety zone immediately in order to ensure the safety of the public and lack 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 impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with salvage and over-water bridge repairs of the I-10 bridge.

### **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 salvage and over-water bridge repairs that began on September 19, 2019, are a safety concern for vessel traffic transiting the navigable waterway of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I-10 bridge, just

abreast of Buoy #14. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone from potential hazardous from salvage and over-water bridge repairs.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from September 25, 2019, through December 24, 2019. The safety zone will cover the navigable waters of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I-10 bridge, just abreast of Buoy #14. The duration of the zone is intended to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone from potential hazardous from salvage and over-water bridge repairs. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

#### **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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), 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 time-of-day of the safety zone. This rule will impact a small designated area of the San Jacinto River in order to support salvage and over-water bridge repairs from September 25, 2019 through December 24, 2019. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channels 13 and 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 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. If you believe this rule has implications for federalism or Indian tribes, please call or email 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 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 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 that will prohibit entry to the navigable waters of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I-10 bridge, just abreast of Buoy #14, without prior approval from Coast Guard Sector Houston-Galveston COTP. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

*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: 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. 0170.1.

2. Add § 165.T08-0818 to read as follows:

**§ 165.T08-0818 Safety Zone; San Jacinto River, Channelview, TX.**

(a) *Location.* The following area is a safety zone: the navigable waters of the San Jacinto River from the southern end of Southwest Shipyard, extending north of the I-10 bridge, just abreast of Buoy #14, in Channelview, TX in approximate location 29°47'33.5"N, 095°03'41.2"W.

(b) *Enforcement period.* This section will be enforced from September 25, 2019, through December 24, 2019, or until all hazardous conditions associated with salvage and over-water bridge repairs have been mitigated.

(c) *Regulations.* (1) Transit of the safety zone is open to limited traffic with the following restrictions:

(i) Only light boats and single barge tows may transit.

(ii) Transit only during daylight hours (sunrise to sunset).

(iii) There shall be no meeting or overtaking.

(iv) All vessels must check in and out with Vessel Traffic Service Houston/Galveston at least 15 minutes prior to entering the safety zone.

(2) Persons and vessels desiring to enter the safety zone must request permission from the COTP or a designated representative. They may be contacted through Vessel Traffic Service (VTS) on channels 13 or 16 VHF-FM, or by telephone at (281) 464-4837.

(3) Permission to transit through the bridge will be based on weather, tide

and current conditions, vessel size, horsepower, and availability of assist vessels. All persons and vessels permitted to enter this temporary safety zone shall comply with the lawful orders or directions given to them by COTP or a designated representative.

(4) Intentional or unintentional contact with any part of the bridge or associated structure, including fendering systems, support columns, spans or any other portion of the bridge, is strictly prohibited. Report any contact with the bridge or associated structures immediately to VTS Houston/Galveston on channels 13 or 16 VHF-FM or by telephone at (281) 464-4837.

(d) *Informational broadcasts.* The Coast Guard will inform the public through public of the effective period of this safety zone through VTS Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: September 25, 2019.

RICHARD E. HOWES,  
CAPTAIN, U.S. Coast Guard,  
Acting Captain of the Port Sector Houston-Galveston.  
[FR Doc. 2019-21277 Filed: 9/30/2019 8:45 am; Publication Date: 10/1/2019]