

River. 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

Marine Safety, Navigation (water), Reporting, and recordkeeping requirements, 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. Add § 165.T08-0850 to read as follows:

§ 165.T08-0850 Safety Zone; Ohio River, Brunot Island, PA.

(a) *Location.* The following area is a temporary safety zone on the Ohio River from mile marker 2.5 to mile marker 3.

(b) *Definitions.* As used in this section, *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 Captain of the Port Pittsburgh (COTP) in the enforcement of the safety zone. Designated representative includes safety boat provided by the event organizers.

(c) *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 the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on Channel 16 or at 412-

670-7288. To seek permission, concerned traffic may reach contact the event organizers on channel 13 or at (860) 573-6646. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced each day from 8 a.m. through 6 p.m. from November 3 through November 6, November 11 through November 12, December 2 through December 3, 2023, and January 8 through January 22, 2024. The temporary safety zone will be enforced during the 10 hour helicopter operation.

Justin R. Jolley,

Commander, U.S. Coast Guard, Acting, Captain of the Port, MSU Pittsburgh.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number: USCG-2023-0135]

RIN 1625-AA00

Safety Zone; Atlantic Ocean, Key West, FL

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 Florida Keys, FL. This action is necessary to ensure the safety of the waters of the Key West Captain of the Port (COTP) zone. This regulation establishes actions to be completed by parties operating on and around the navigable waterways of the Key West 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 Florida Keys.

DATES: This rule is effective without actual notice November 6, 2023. For the purposes of enforcement, actual notice will be used from November 1, 2023, until November 6, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0135 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 notification of enforcement, call or email Hailye Wilson, Sector Key West Waterways Management Department, Coast Guard; telephone 305-292-8768; email: hailye.m.wilson@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

The Florida Keys has the potential to be affected by hurricanes, tropical storms, and other disasters on a yearly basis, especially between the months of June and November. The Key West COTP is establishing a safety zone to provide for the safety of life during such storms and events. In response, on May 2, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM).¹ There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to safety zone. During the comment period that ended June 1, 2023, we received two comments.

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 public interest because immediate action is needed to respond to the potential safety hazards associated with the rapid formation of a tropical storm or hurricane that would pose an imminent threat to vessels, persons, structures, and shore areas.

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

¹ 88 FR 27421.

or shore area immediately adjacent to those waterways in the COTP Key West zone, in the event of a hurricane, tropical storm, and other natural disasters.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published May 2, 2023. The first commenter positively endorsed the Coast Guard's establishment of this safety zone. They further recommended that small entities and individuals who choose to reside in Florida assume all the liability, risk and responsibilities associated with hurricanes. They also recommended that tax-payer-funds not be expended to combat the effects of climate change. The Coast Guard acknowledges these comments and determined no recommended changes are needed in response to these suggestions. Additionally, this commenter recommended the fossil fuel industry, and their shareholders bear the cost associated with climate change. With regards to this suggestion, the suggestion is outside the scope of this rulemaking, which pertains to the establishment of a safety zone to be subject to enforcement in the event of a hurricane, tropical storm, and other disaster in the Florida Keys, FL.

The second commenter raised several issues regarding the lack of clarity in the proposed regulatory text and questioned whether the rule is necessary. The rule is necessary to protect the general maritime public in the COTP Key West zone, in the event of extreme weather or other natural disasters. While the regulations in 33 CFR part 160, subpart B, "Control of Vessel and Facility Operations" grants the COTP the broad authority to direct the operations of vessels on the navigable waters, and waterfront facilities, land structures or shore areas immediately adjacent to the navigable waters, this rule is intended to specifically streamline the COTP's actions and processes for specific scenarios that may occur in the event of extreme weather or other natural disasters.

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. The rule is also intended to provide vessel owners and

operators, 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.

To address the commenter's concerns regarding the lack of clarity in the proposed regulatory text, the Coast Guard is making the following changes in the final rule regulatory text in § 165.707.

The Coast Guard is adding three definitions for "regulated facilities," "waterfront facilities," and "authorized law enforcement agencies" 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,² Maritime Transportation and Security Act,³ Clean Water Act,⁴ and the Oil Pollution Act of 1990.⁵ 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" to the regulatory text which will include any land structure or shore area immediately adjacent to the navigable waters of the Key West COTP zone. We also added a definition for "authorized law enforcement agencies" to clarify that Federal, State, and local law enforcement agencies that have received specific authorization from or are operating in concert with the Coast Guard are authorized to conduct operations related to the safety, security, and stability of the Key West COTP zone.

Additionally, the commenter raised concerns related to enforceability and notice requirements. The Coast Guard understands that its regulations are not enforceable on the public without proper notice. While the publication of this final rule document in the **Federal Register** constitutes constructive notice of the requirements within the regulations. However, there will be circumstances where individuals are notified by the Coast Guard of an impending extreme weather situation causing the need for the safety zone to be made subject to enforcement. In

those types of circumstances, the Coast Guard will provide affected individuals with actual notice of the safety zone prior to its enforcement or assessment of any fines or penalties. In addition to changes made to the regulatory text in this final rule in response to comment, we are making the following changes to the regulatory text.

In paragraph (a), we are adding "regulated facilities, and "waterfront facilities" to clarify that regulated facilities and waterfront facilities as defined in paragraphs (b)(6) and (b)(7) respectively are covered by this safety zone when port conditions are met in accordance with the requirements in paragraph (c)(1) *Port Condition WHISKEY* and (c)(2) *Port Condition X-RAY*. Additionally, in paragraph (a), we are deleting "during specified conditions" because the location of the safety zone is intended to be constant. When the safety zone is subject to enforcement it will be determinate of conditions set forth in paragraphs (c)(1) through (c)(5) of the regulatory text. In paragraph (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 (a)(6) and (a)(7). In the event Port Condition WHISKEY is set, all vessels, regulated facilities, and waterfront facilities within the Key West COTP zone would have to comply with the applicable regulations in (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 300 gross tons (GT) intending to remain in the port during Port Condition Whiskey must contact the Key West 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 paragraph (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)(6) and (a)(7). In the event Port Condition X-RAY is set, all vessels, regulated facilities, and waterfront facilities within the Key West 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

² 46 U.S.C. 70001 *et seq.*

³ 46 U.S.C. 70101 *et seq.*

⁴ 33 U.S.C. 1251 *et seq.*

⁵ 33 U.S.C. 2701 *et seq.*

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)(6), we are revising the text to clarify that the Coast Guard Sector Key West 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.

We are deleting paragraph (c)(7) because it is duplicative of what is contained in paragraph (c)(6). The information previously described in (c)(8) was thereby moved to (c)(7).

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 necessity to protect life and port infrastructure during a hurricanes, tropical storms, and other disasters. The absence of a safe harbor in the Florida Keys precludes large vessels from accessing adequate facilities to weather a substantial storm or natural disaster within the Key West COTP zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone, and the rule would allow vessels to seek permission to remain in port.

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 00 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 (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 a safety zone that would prohibit entry in certain waters of the Key West COTP for

the duration needed to ensure safe transit of vessels and industry post-hurricane, post-storm, and post-emergency. 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: 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 § 165.707 to read as follows:

§ 165.707 Safety Zone; Hurricanes, Tropical Storms and Other Disasters in Florida Keys.

(a) *Regulated Areas.* All navigable waters, regulated facilities, and waterfront facilities within the Key West Captain of the Port (COTP) zone, Key West, Florida (as described in 33 CFR 3.35-40).

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

Authorized Law Enforcement Agencies means Federal, State, and local law enforcement agencies that have received specific authorization from or are operating in concert with the Coast Guard to conduct operations related to the safety, security and stability of the Key West COTP zone.

Designated Representative means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State,

and local officers designated by or assisting the COTP in the enforcement of the regulated areas.

Port Condition WHISKEY means a condition set by the COTP when weather advisories indicate sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

Port Condition X-RAY means a condition set by the COTP when weather advisories indicate sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

Port Condition YANKEE means a condition set by the COTP when weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

Port Condition ZULU means a condition set by the COTP when weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

Regulated Facilities means shoreside facilities regulated by the Coast Guard under the Ports and Waterways Safety Act,⁶ Maritime Transportation and Security Act,⁷ Clean Water Act,⁸ and the Oil Pollution Act of 1990,⁹ and regulations in 33 CFR parts 105, 154, 156, and 158.

Waterfront Facilities means any land structure or shore area immediately adjacent to the navigable waters of the Key West COTP zone.

(c) *Regulations*—(1) *Port Condition WHISKEY.* All vessels, regulated facilities, and waterfront facilities within the Key West 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 300 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 300 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 Key West 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 300 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 300 GT must have departed designated ports within the Key West 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 Restrictions for Other Disasters.* Any natural or other disasters that are anticipated to affect the Key West COTP zone will result in the prohibition of regulated facility operations and vessel traffic transiting or remaining in the affected port.

(6) *Safety Zones Notice.* Coast Guard Sector Key West 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.

(7) *Exception.* This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Jason D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port, Sector Key West.

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⁶ 46 U.S.C. 70001 *et seq.*

⁷ 46 U.S.C. 70101 *et seq.*

⁸ 33 U.S.C. 1251 *et seq.*

⁹ 33 U.S.C. 2701 *et seq.*