

(3) It is a utility that is described in guidance published for this purpose in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(D) Determinations under paragraphs (e)(1)(i)(C)(1) and (2) of this section take into account only the manner in which the energy is produced and not who owns the energy property or the facility or whether the applicability of relevant portions of sections 45 and 48 has expired.

\* \* \* \* \*

(iv) \* \* \*

(B) To the extent that the utility consumed is described in paragraph (e)(1)(i)(B) of this section, the utility rate charged to the tenants of the unit does not exceed the highest rate that the tenants would have paid if they had obtained the utility from a local utility company. In determining whether a rate satisfies the preceding sentence, a building owner may rely on the rates published by local utility companies.

\* \* \* \* \*

#### § 1.42–10T [Removed]

■ **Par. 5.** Section 1.42–10T is removed.

■ **Par. 6.** Section 1.42–12 is amended by:

- 1. Revising paragraph (a)(5)(i)(E).
- 2. Revising paragraph (a)(5)(ii).
- 3. Adding paragraph (a)(5)(iii).

The revisions and addition read as follows:

#### § 1.42–12 Effective dates and transitional rules.

(a) \* \* \*

(5) \* \* \*

(i) \* \* \*

(E) Section 1.42–10(e), except as provided in paragraph (a)(5)(iii) of this section.

(ii) Except as provided in paragraph (a)(5)(iii) of this section, a building owner may apply the provisions described in paragraphs (a)(5)(i)(A) through (E) of this section to the building owner's taxable years beginning before March 3, 2016. Otherwise, the utility allowance provisions that apply to those taxable years are contained in § 1.42–10, as contained in 26 CFR part 1, revised as of April 1, 2015.

(iii) The provisions in § 1.42–10(e)(1)(i) introductory text, (e)(1)(i)(B) through (D), and (e)(1)(iv)(B) apply to a building owner's taxable years beginning on or after March 4, 2019. A building owner, however, may apply these provisions to earlier taxable years. Otherwise, the submetering provisions that apply to taxable years beginning after March 3, 2016, and before March 4, 2019, are contained in § 1.42–10 and

§ 1.42–10T as contained in 26 CFR part 1 revised as of April 1, 2016. In addition, a building owner may apply those submetering provisions to taxable years beginning before March 3, 2016.

\* \* \* \* \*

**Kirsten Wielobob,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 26, 2019.

**David J. Kautter,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2019–03827 Filed 2–27–19; 4:15 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 100 and 165

[Docket No. USCG–2018–0231]

RIN 1625–AA00, 1625–AA08, 1625–AA11, 1625–AA87

#### Removal of Regulated Navigation Areas, Safety Zones, Security Zones, and Special Local Regulations Within District 7

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is updating District 7 regulations to reflect the current status of identified regulated navigation areas, special local regulations, safety zones, and security zones within the District. This rule removes safety zones and special local regulations for rules where the enforcement period has expired or where the event is no longer held. This rule also removes special local regulations where the event no longer meets the criteria for a permitted event and is not suitable for coverage under a special local regulation in accordance with Coast Guard regulations.

**DATES:** This rule is effective April 3, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2018–0231 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** For information about this document, call or email Paul Lehmann, District Seven Prevention Division, U.S. Coast Guard; telephone 301–415–6796, email [Paul.D.Lehmann@uscg.mil](mailto:Paul.D.Lehmann@uscg.mil).

## SUPPLEMENTARY INFORMATION:

### I. Table of Abbreviations

CATEX Criteria for Categorical Exclusion  
 CFR Code of Federal Regulations  
 COTP Captain of the Port  
 DHS Department of Homeland Security  
 FR Federal Register  
 OMB Office of Management and Budget  
 § Section  
 U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

This rulemaking project was identified as part of the Coast Guard's Regulatory Reform Task Force initiative. These District 7 field regulation changes were identified as part of the deregulation identification process required by Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 13777 (Enforcing the Regulatory Reform Agenda Deregulatory Process), and associated guidance issued in 2017. This rule provides updates and clarifications to existing regulatory text in title 33 of the Code of Federal Regulations (CFR) parts 100 and 165.

This rule removes safety zones and special local regulations for regulations where the enforcement period has expired or where the event is no longer held. This rule also removes special local regulations where the event no longer meets the criteria for a permitted event and is not suitable for coverage under a special local regulation in accordance with 33 CFR 100.35. District 7 has determined that normal navigation rules cover the safety of participants and spectators at these events adequately. If a change in circumstance indicates that additional safety measures are necessary, the Coast Guard might choose to promulgate new regulations for safety zones at these events at that time.

The changes to 33 CFR part 100 are specifically authorized under 33 U.S.C. 1233, which vests the Commandant of the Coast Guard with authority to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. The changes to 33 CFR part 165 are authorized under the general authority of 22 U.S.C. 1231, which grants the Secretary of the Department of Homeland Security broad authority to issue, amend, or repeal regulations necessary to implement 33 U.S.C. chapter 25, Ports and Waterways Safety Program. The Secretary has delegated rulemaking authority under 33 U.S.C. 1231 to the Commandant via Department of Homeland Security Delegation No. 0170.1.

The Coast Guard is issuing this 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 with respect to this rule because it is unnecessary to do so. All of the changes in this final rule involve only minor amendments to existing regulations that will not result in a substantive effect on the public.

### III. Discussion of Rule

#### A. Removal of Temporary Regulations for Past Events

##### (1) Temporary Special Local Regulations

This rule removes the temporary special local regulations 33 CFR 100.T07–0110, 100.T07–0192, and 100.35T07–0297. As discussed in the preamble for each of the associated **Federal Register** documents implementing these temporary regulations and the corresponding regulatory text, these regulations were meant to be of limited duration. They remain in the CFR at this time because of drafting errors in the **DATES** section of each of the implementing final rules. “Special Local Regulation; Low Country Splash, Wando River, Cooper River, and Charleston Harbor, Charleston, SC,” 33 CFR 100.T07–0110, was meant to expire on May 24, 2014, at 9 a.m. at the conclusion of the 2014 Low Country Splash. “Special Local Regulations; Beaufort Water Festival, Beaufort, SC,” 33 CFR 100.T07–0192, was meant to expire on July 26, 2015, at 4 p.m. at the conclusion of the 2015 Beaufort Water Festival. “Special Local Regulation, 50 Aniversario Balneario de Boqueron, Bahia de Boqueron; Boqueron, PR,” 33 CFR 100.35T07–0297 was meant to expire on May 5, 2013, at 4 p.m. at the conclusion of the 50 Aniversario Balneario de Boqueron.

##### (2) Temporary Safety Zones

This rule removes the temporary safety zone regulations 33 CFR 165.T07–0040, 165.T07–0161, 165.T07–0320 and 165.T07–0347. As discussed in the preamble for each of the accompanying **Federal Register** documents implementing these regulations and the corresponding regulatory text, these regulations were meant to be of limited duration. They remain in the CFR at this time because of drafting errors in the **DATES** section of each of the

implementing final rules. “Safety Zone; Cooper River Bridge Run, Charleston, SC,” 33 CFR 165.T07–0040, was meant to expire on March 28, 2015, at 10:30 a.m., at the conclusion of the 2015 Cooper River Bridge Run. “Safety Zone; Xterra Swim, Myrtle Beach, SC,” 33 CFR 165.T07–0161, was meant to expire on May 4, 2014, at 8:15 a.m., at the conclusion of the 2014 Xterra Swim. “Safety Zone; Fourth of July Fireworks North Myrtle Beach, SC,” 33 CFR 165.T07–0320, was meant to expire on July 4, 2016, at 10:00 p.m., at the conclusion of the fireworks show. “Safety Zone; Fourth of July Fireworks Murrells Inlet, SC,” 33 CFR 165.T07–0347, was meant to expire on July 4, 2016, at 10 p.m.

None of these regulations—temporary special local regulations or temporary safety zones—have been enforced past the intended expiration period.

#### B. Removal of Special Local Regulations for Events No Longer Held

This rule removes certain entries in the list of recurring special local regulations in Captain of the Port (COTP) Zones Miami and Key West found in the table to 33 CFR 100.701. The Coast Guard has looked into each of these events and has found no evidence to indicate that these events are still being held. The entries being removed from this list for COTP Miami are Rotary Club of Fort Lauderdale New River Raft Race, Red Bull Candola, West Palm Beach Triathlon, and West Palm Beach World Championship. The entries being removed from this list for COTP Key West are The Bogey, The Bacal, and Miami to Key Largo Sailboat Race.

#### C. Removal of Special Local Regulations for Events No Longer Permitted

This rule removes special local regulations in COTP Zone Key West where the events in question no longer meet the criteria for permitted events and, therefore, are not suitable for coverage under a special local regulation in accordance with 33 CFR 100.35. District 7 has determined that the safety of participants and spectators at these events can be adequately covered by the normal navigational rules. If a change in circumstances indicates that additional safety measures are necessary, the Coast Guard might decide at that time to promulgate regulations for safety zones for these events. The entries being removed from this list for COTP Key West in the table to 33 CFR 100.701 are Blessing of the Fleet, Wreckers Cup Races, Boot Key Harbor Christmas Boat Parade, Key Colony Beach Holiday Boat Parade, Key

Largo Boat Parade, and Key West Lighted Boat Parade.

#### D. 33 CFR 165.778

The Coast Guard is removing paragraph (d) from 33 CFR 165.778 regarding the effective period of the security zone for the Port of Mayaguez. Paragraph (d) states the section had an effective period that ended April 29, 2009. Paragraph (d) conflicts with the effective information stated in the **DATES** section of the issuing final rule (74 FR 14046, March 30, 2009). This rule has continuing effect and did not cease being in effect after April 29, 2009.

### IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

#### A. Regulatory Planning and Review

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. OMB considers this rule to be an Executive Order 13771 deregulatory action. See the OMB Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

The Coast Guard is revising its regulations to provide updates and clarifications to existing regulatory text in title 33 of the Code of Federal Regulations (CFR) parts 100 and 165.

The revisions include the removal of temporary safety zones and special local regulations for past events, special local regulations for events no longer held and special local regulations for events no longer permitted. Normal navigation rules sufficiently cover the safety of participants and spectators at events that are no longer suitable for coverage under a special local regulation. This rule involves non-substantive changes and internal agency practices and procedures; it will not impose any additional costs on the public or the government. The qualitative benefit of the non-substantive changes is increased clarity of regulations. The increased clarity of the CFR is created by the removal of expired enforcement periods and the removal of events that are no longer held.

#### *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. This rule will not impose any impacts on any entities. This means that there will be no economic impacts on any entities. Therefore, 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.

#### *C. Assistance for Small Entities*

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 so that they can better evaluate its effects on them and participate in the rulemaking. 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 in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

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.

#### *D. Collection of Information*

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change any of the burdens in the collections currently approved by OMB.

#### *E. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### *F. 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 1 year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *G. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.ID (COMDTINST M16475.1D), which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f). Our determination is that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble.

This rule meets the criteria for categorical exclusion (CATEX) under paragraphs L54, L60, and L61 in Appendix A of DHS Directive 023–01. CATEX L54 pertains to promulgation of regulations that are editorial or procedural; CATEX L60 pertains to regulations for establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones; and CATEX L61 pertains to special local regulations issued in conjunction with a regatta or marine parade. This rule amends the Coast Guard District 7 field regulations by incorporating updates and clarifications to existing regulatory text in title 33 CFR parts 100 and 165. These changes generally pertain to removing certain obsolete special event regulations or clarifying the intended effective period of the security zone for the Port of Mayaguez (33 CFR 165.778).

The Coast Guard’s Regulatory Reform Task Force Initiative identified these regulation changes, which are consistent with the Coast Guard’s maritime safety and stewardship missions.

#### **List of Subjects**

##### *33 CFR Part 100*

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

##### *33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons stated in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

- 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 33 CFR 1.05–1.

##### **§ 100.T07–0110 [Removed]**

- 2. Remove § 100.T07–0110

##### **§ 100.T07–0192 [Removed]**

- 3. Remove § 100.T07–0192

**§ 100.35T07-0297 [Removed]**

- 4. Remove § 100.35T07-0297

**§ 100.701 [Amended]**

- 5. In § 100.701, amend the table to § 100.701 as follows:
  - a. Add the heading “(a) COTP Zone Miami; Special Local Regulations” before entry 1 at the top of the table.
  - b. Remove entries (a)1, 4, 6, and 9.
  - c. Redesignate entries (a)2, 3, 5, 7, 8, and 10 through 15 as entries (a)1 through 11.
  - d. Remove entries (c)1, 2, 4, 5, 6, 10, 11, 12, and 13.
  - e. Redesignate entries (c)3, 7, 8, and 9 as entries (c)1 through 4.

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

- 6. 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.

**§ 165.T07-0040 [Removed]**

- 7. Remove § 165.T07-0040.

**§ 165.T07-0161 [Removed]**

- 8. Remove § 165.T07-0161.

**§ 165.T07-0320 [Removed]**

- 9. Remove § 165.T07-0320.

**§ 165.T07-0347 [Removed]**

- 10. Remove § 165.T07-0347.

**§ 165.778 [Amended]**

- 11. Amend § 165.778 by removing paragraph (d).

Dated: February 27, 2019.

**Peter J. Brown,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 2019-03844 Filed 3-1-19; 8:45 a.m.]

BILLING CODE 9110-04-P

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG-2019-0127]

RIN 1625-AA00

**Safety Zone; Cumberland River, Kentucky**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for

all navigable waters between mile marker 0.0 and mile marker 3.0 of the Cumberland River in Smithland, Kentucky. The safety zone is needed to protect personnel, vessels, and personal property from potential hazards created by vessel wake during a high water event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

**DATES:** This rule is effective without actual notice from March 4, 2019 until March 15, 2019. For the purposes of enforcement, actual notice will be used from February 26, 2019 until March 4, 2019. This rule will be enforced from February 26, 2019 to March 15, 2019, unless the lower gauge at Smithland Lock and Dam falls below 50 feet, in which case the enforcement of this rule will be terminated.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0127 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 MST2 Dylan Caikowski, Marine Safety Unit Paducah, U.S. Coast Guard; telephone 270-442-1621 ext. 2120, email [STL-SMB-MSUPaducah-WWM@uscg.mil](mailto:STL-SMB-MSUPaducah-WWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:****I. Table of Abbreviations**

CFR Code of Federal Regulations  
 COTP Captain of the Port Sector Ohio Valley  
 DHS Department of Homeland Security  
 FR Federal Register  
 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. We must establish this

emergency safety zone by February 26, 2019 to ensure the safety of residents and the protection of personal property near the riverfront in Smithland, Kentucky during a high water event.

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 contrary to the public interest because delaying the effective period will compromise the safety of residents, vessels, and personal property near the riverfront of Smithland, Kentucky during a high water event.

**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 Sector Ohio Valley (COTP) has determined a safety zone is needed to protect personnel, vessels, and personal property from potential hazards created by vessel wake during a high water event.

**IV. Discussion of the Rule**

This rule establishes a safety zone from February 26, 2019 to March 15, 2019 or when the lower gauge at Smithland Lock and Dam falls below 50 feet, whichever occurs first. The safety zone will cover all navigable waters between mile marker 0.0 and mile marker 3.0 of the Cumberland River in Smithland, Kentucky. The duration of the zone is intended to protect personnel, vessels, and the personal property in these navigable waters during the high water event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The COTP or a designated representative will inform the public through broadcast notices to mariners of any changes in the planned schedule.

**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