

to the same ERISA standards and remedies that apply to any company offering the same services to employers. Similarly, a prototype plan or multiple employer plan program that a state offers to employers would have to comply with the same ERISA requirements and would have to be subject to the same remedies as any private party offering such products and services.<sup>17</sup>

Even if the state laws enacted to establish programs of the sort described above “reference” employee benefit plans in a literal sense, they should not be seen as laws that “relate to” ERISA plans in the sense ERISA section 514(a) uses that statutory term because they are completely voluntary from the employer’s perspective, the state program would be entirely subject to ERISA, and state law would not impose any outside regulatory requirements beyond ERISA. They do not require employers to establish ERISA-covered plans, forbid any type of plan or restrict employers’ choices with respect to benefit structures or their administration. These laws would merely offer a program that employers could accept or reject. *See Dillingham*, 519 U.S. at 325–28.

In addition, none of the state approaches described above resemble the state laws that the Court held preempted in its pre-*Travelers* “reference to” cases. Those laws targeted ERISA plans as a class with affirmative requirements or special exemptions. *See, e.g., District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 128, 129–133 (1992) (workers’ compensation law that required employee benefits “set by reference to [ERISA] plans”) (citation omitted); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 135–136, 140 (1990) (common law claim for wrongful discharge to prevent attainment of ERISA benefits); *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 828 & n.2, 829–830 (1988) (exemption from garnishment statute for ERISA plans). In the case of the state actions outlined above, any restriction on private economic activity arises, not from state regulatory actions, but from the application of ERISA requirements to the plans, service providers, and investment products, that the state, as any other private sector participant in the market, selects in deciding what it is willing to offer.

Finally, it is worth noting that even if the state laws implementing these approaches “relate to” ERISA plans in some sense of that term, it is only because they create or authorize arrangements that are fully governed by ERISA’s requirements. By embracing ERISA in this way, the state would not on that basis be running afoul of section 514(a) because ERISA fully applies to the arrangement and there is nothing in the state law for ERISA to “supersede.” In this regard, section 514(a) of ERISA, in relevant part, provides that Title I of ERISA “shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan . . . .” To the extent that the state makes plan design decisions in fashioning its prototype plan or state sponsored plan, or otherwise adopts rules necessary to run the plan, those actions would be the same as any other prototype plan provider or employer sponsor of any ERISA-covered plan, and the arrangement would be fully and equally subject to ERISA.

This conclusion is supported by the Department’s position regarding state governmental participation in ERISA plans in another context. Pursuant to section 4(b)(1) of ERISA, the provisions of Title I of ERISA do not apply to a plan that a state government establishes for its own employees, which ERISA section 3(32) defines as a “governmental plan.” The Department has long held the view, however, that if a plan covering governmental employees fails to qualify as a governmental plan, it would still be subject to Title I of ERISA.<sup>18</sup> In these circumstances, the failure to qualify as a governmental plan does not prohibit a governmental employer from providing benefits through, and making contributions to, an ERISA-covered employee benefit plan.<sup>19</sup> Thus, the effect of ERISA is not to prohibit the state from offering benefits, but rather to make those benefits subject to ERISA. Here too, ERISA does not supersede state law to the extent it merely creates an arrangement that is fully governed by ERISA.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2015–29427 Filed 11–16–15; 4:15 pm]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 147

[Docket No. USCG–2015–0318]

RIN 1625–AA00

### Safety Zone; Turrutella FPSO, Walker Ridge 551, Outer Continental Shelf on the Gulf of Mexico

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around the Turrutella FPSO system, Walker Ridge 551 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of the safety zone is to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Placing a safety zone around the facility will significantly reduce the threat of allisions, collisions, security breaches, oil spills, releases of natural gas, and thereby protect the safety of life, property, and the environment.

**DATES:** This rule is effective December 18, 2015.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2015–0318 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Rusty Wright, U.S. Coast Guard, District Eight Waterways Management Branch; telephone 504–671–2138, [rusty.h.wright@uscg.mil](mailto:rusty.h.wright@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

DHS Department of Homeland Security  
FR Federal Register  
FPSO Floating Production Storage Offloading Vessel  
NPRM Notice of Proposed Rulemaking  
OCS Outer Continental Shelf  
USCG United States Coast Guard

##### II. Background Information and Regulatory History

Shell Exploration & Production Company requested that the Coast Guard establish a safety zone around the Turrutella FPSO, which is a ship-shaped offshore production facility that stores crude oil in tanks located in its hull. It will attach to a moored turret buoy and

<sup>17</sup> State laws relating to sovereign immunity for state governments and their employees would have to be evaluated carefully to ensure they do not conflict with ERISA’s remedial provisions.

<sup>18</sup> *See, e.g.,* Advisory Opinion 2004–04A.

<sup>19</sup> *See* Information Letter to Michael T. Scaraggi and James M. Steinberg from John J. Canary (April 12, 2004).

move in a 360 degree arc around the position 26°25'38.74" N., 90°48'45.34" W. The purpose of the safety zone is to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Therefore, on July 28, 2015 we published a NPRM with a request for comments entitled, "Safety Zones: Turretella FPSO system, Walker Ridge 551, Outer Continental Shelf on the Gulf of Mexico" in the **Federal Register** (80 FR 44910). We received no comments on the NPRM.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 14 U.S.C. 85, 43 U.S.C. 1333, Department of Homeland Security Delegation No. 0170.1, and 33 CFR part 147, which collectively permit the establishment of safety zones for facilities located on the OCS for the purpose of protecting life, property and the marine environment.

The Coast Guard has determined that a safety zone is necessary to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. The purpose of the rule is to significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

For the purpose of safety zones established under 33 CFR part 147, the deepwater area is considered to be waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways.

### IV. Discussion of Comments, Changes and the Final Rule

As noted above, we received no comments on our NPRM published July 28, 2015. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone extending 500 meters (1640.4 feet) around the stern of the FPSO when it is moored to the turret buoy. If the FPSO detaches from the turret buoy, the safety zone of 500 meters (1640.4) will be

measured from the center point of the turret buoy. No vessel, except those attending the facility, or those less than 100 feet in length and not engaged in towing will be permitted to enter the safety zone without obtaining permission from Commander, Eighth Coast Guard District or a designated representative.

### V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and executive orders, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This rule is not a significant regulatory action due to the location of the Turretella FPSO—on the Outer Continental Shelf—and its distance from both land and safety fairways. Vessel traffic can pass safely around the safety zone using alternate routes. Exceptions to this rule include vessels measuring less than 100 feet in length overall and not engaged in towing. Deviation to transit through the safety zone may be requested. Such requests will be considered on a case-by-case basis and may be authorized by the Commander, Eighth Coast Guard District or a designated representative.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 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 contact 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 Government

A rule has implications for federalism under E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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 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 Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(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 rule involves the establishment of a safety zone around an OCS Facility to protect life, property and the marine environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. The environmental analysis checklist supporting this determination and Categorical Exclusion Determination are 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 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.

#### **List of Subjects in 33 CFR Part 147**

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

### **PART 147—SAFETY ZONES**

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** 14 U.S.C. 85; 43 U.S.C. 1333; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.863 to read as follows:

#### **§ 147.863 Turretella FPSO System Safety Zone.**

(a) *Description.* The Turretella, a Floating Production, Storage and Offloading (FPSO) system is to be installed in the deepwater area of the Gulf of Mexico at Walker Ridge 551. The FPSO can swing in a 360 degree arc around the center point of the turret buoy's swing circle at 26°25'38.74" N., 90°48'45.34" W., and the area within 500 meters (1640.4 feet) around the stern of the FPSO when it is moored to the turret buoy is a safety zone. If the FPSO detaches from the turret buoy, the area within 500 meters (1640.4 feet) around the center point at 26°25'38.74" N., 90°48'45.34" W. is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

- (1) An attending vessel;
- (2) A vessel under 100 feet in length overall not engaged in towing; or
- (3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: October 27, 2015.

**David R. Callahan,**

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

[FR Doc. 2015–29449 Filed 11–17–15; 8:45 am]

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### **DEPARTMENT OF HOMELAND SECURITY**

#### **Coast Guard**

#### **33 CFR Part 147**

[Docket No. USCG–2015–0320]

**RIN 1625–AA00**

#### **Safety Zone; Titan SPAR, Mississippi Canyon 941, Outer Continental Shelf on the Gulf of Mexico**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around the Titan SPAR system, located in Mississippi Canyon Block 941 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of the safety zone is to protect the facility from all vessels operating outside the normal

shipping channels and fairways that are not providing services to or working with the facility. Placing a safety zone around the facility will significantly reduce the threat of allisions, collisions, security breaches, oil spills, releases of natural gas, and thereby protect the safety of life, property, and the environment.

**DATES:** This rule is effective December 18, 2015.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2015–0320 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Rusty Wright, U.S. Coast Guard, District Eight Waterways Management Branch; telephone 504–671–2138, [rusty.h.wright@uscg.mil](mailto:rusty.h.wright@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

DHS Department of Homeland Security  
FR **Federal Register**  
NPRM Notice of Proposed Rulemaking  
OCS Outer Continental Shelf  
SPAR A large diameter, vertical cylinder supporting a deck  
USCG United States Coast Guard

##### **II. Background Information and Regulatory History**

Bennu Oil and Gas requested that the Coast Guard establish a safety zone extending 500 meters (1640.4 feet) from each point on the Titan SPAR facility structure's outermost edge located in the deepwater area of the Gulf of Mexico on the OCS. The purpose of the safety zone is to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Therefore, on July 24, 2015 we published a NPRM with a request for comments entitled, “Safety Zones: Titan SPAR, Mississippi Canyon 941, Outer Continental Shelf on the Gulf of Mexico” in the **Federal Register** (80 FR 43998). We received no comments on the NPRM.

##### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 14 U.S.C. 85, 43 U.S.C. 1333, Department of Homeland Security Delegation No. 0170.1, and Title 33, CFR part 147, which collectively permit the establishment of safety zones for facilities located on the OCS for the purpose of protecting life, property and the marine environment. The Coast Guard has determined that a