

**Federal Register** before promulgating a rule that has legal force.” *Little Sisters of the Poor Sts. Peter & Paul Home v. Pennsylvania*, 591 U.S. ---, 140 S. Ct. 2367, 2384 (2020). The Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Further, 5 U.S.C. 553(d) provides an exception to the usual requirement of a delayed effective date for a substantive rule that relieves a restriction, or when the agency finds “good cause” that the rule be made immediately effective.

An agency may find that notice and comment is “unnecessary” where the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and public. *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012); *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 754–55 (D.C. Cir. 2001). Unlike previous Bureau interim final rules courts have addressed, this interim final rule is by its nature non-substantive, functioning only as updated guidance on attorney visits to Bureau institutions by specifically expanding access to counsel for pre-trial detainees in Bureau custody. *Cf. Paulsen v. Daniels*, 413 F.3d 999 (9th Cir. 2005) (holding the Bureau violated the APA by issuing an interim final rule that had “the effect . . . [of] deny[ing] program eligibility to certain categories of inmates . . .”).

This rulemaking is exempt from normal notice-and-comment procedures because advance notice in this instance is unnecessary. The change to this regulation is non-substantive, minor, routine, insignificant, and made only to clarify procedures for attorney visits at Bureau institutions and to further promote inmates’ right of access to counsel. This interim final rule makes no change to any rights or responsibilities of the agency or any regulated entities and, instead, seeks to promptly clarify procedures primarily for the benefit of current inmates and their attorneys who require access to them while they are housed at Bureau facilities designated for pretrial and presentenced detainees. For the same reasons, the Bureau finds that “good cause” exists to make this interim final rule immediately effective upon publication. Nevertheless, the Bureau of Prisons is accepting post-promulgation public comments.

#### *Unfunded Mandates Reform Act of 1995*

This interim final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Regulatory Flexibility Act*

The Director has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. Further, a regulatory flexibility analysis is not required when the agency is not required to publish a general notice of proposed rulemaking, as is the case here. 5 U.S.C. 601(2), 604(a).

#### *Congressional Review Act*

This regulation is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

#### **List of Subjects in 28 CFR Part 543**

Prisoners, Legal activities.

Accordingly, under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96, the Bureau amends 28 CFR part 543 as follows.

#### **SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

#### **PART 543—LEGAL MATTERS**

- 1. The authority citation for part 543 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

#### **Subpart B—Inmate Legal Activities**

- 2. In § 543.13, revise paragraph (c) and the first sentence of paragraph (e) to read as follows:

##### **§ 543.13 Visits by attorneys.**

\* \* \* \* \*

(c) For Bureau institutions that do not house pretrial detainees and unsentenced individuals, the attorney shall make an advance appointment for the visit through the Warden prior to

each visit. However, the Warden shall make every effort to arrange for a visit when prior notification is not practicable. Bureau institutions that house pretrial detainees and unsentenced individuals will allow scheduled and unscheduled attorney visits during designated attorney visitation hours.

\* \* \* \* \*

(e) Staff shall not subject visits between an attorney and an inmate to auditory supervision. \* \* \*

\* \* \* \* \*

**Colette S. Peters,**

*Director, Federal Bureau of Prisons.*

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[Docket No. USCG–2024–0105]

#### **Safety Zones in Reentry Sites; Jacksonville, Florida**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard is activating three safety zones for the AXIOM–3 Commercial Crew mission reentry, vehicle splashdown, and recovery operations. These operations will occur in the U.S. Exclusive Economic Zone (EEZ). Our regulation for safety zones in reentry sites within the Seventh Coast Guard District identifies the regulated areas for this event. No U.S.-flagged vessel may enter the safety zones unless authorized by the Captain of the Port Savannah or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zones.

**DATES:** The regulations in 33 CFR 165.T07–0806 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Lieutenant Junior Grade Anthony Harris, Marine Safety Unit Savannah, Waterways Division, U.S. Coast Guard; telephone 912–210–8714, email: [Anthony.E.Harris@uscg.mil](mailto:Anthony.E.Harris@uscg.mil).

**SUPPLEMENTARY INFORMATION:** With this document, the Coast Guard Captain of the Port (COTP) Savannah is activating

a portion of the safety zone as listed in 33 CFR 165.T07–0806(a)(1), and the safety zones listed in (a)(2) and (a)(3) on February 2, 2024 through February 10, 2024, for the AXIOM–3 Commercial Crew mission reentry vehicle splashdown, and the associated recovery operations in the U.S. EEZ. These safety zones are located within the COTP Savannah Area of Responsibility (AOR) offshore of Jacksonville, Florida. The Coast Guard is activating these safety zones in order to protect vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations. In accordance with the general regulations in 33 CFR part 165, subpart C, no U.S.-flagged vessel may enter the safety zones unless authorized by the COTP Savannah or a designated representative except as provided in § 165.T07–0806(d)(3). All foreign-flagged vessels are encouraged to remain outside the safety zones.

There are two other safety zones listed in § 165.T07–0806(a)(2) through (a)(5), which are located within the COTP St. Petersburg and Jacksonville AORs, that are being simultaneously activated through separate notifications of enforcement of the regulation document issued under Docket Numbers USCG–2024–106, and USCG–2024–0085.<sup>1</sup>

Twenty-four hours prior to the Axiom-3 recovery operations, the COTP Jacksonville, the COTP Savannah, the COTP St. Petersburg, or designated representative will inform the public that whether any of the five safety zones described in § 165.T07–0806, paragraph (a), will remain activated (subject to enforcement). If one of the safety zones described in § 165.T07–0806, paragraph (a), remains activated it will be enforced for four hours prior to the Axiom-3 splashdown and remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) that the safety zone is no longer subject to enforcement. After the Axiom-3 reentry vehicle splashdown, the COTP or a designated representative will grant general permission to come no closer than 3 nautical miles of any reentry vehicle or space support vessel engaged in the recovery operations, within the activated safety zone described in § 165.T07–0806, paragraph (a). Once the reentry vehicle, and any personnel involved in reentry service, are removed from the water and secured onboard a

space support vessel, the COTP or designated representative will issue a Broadcast Notice to Mariners on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement. The recovery operations are expected to last approximately one hour.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

Dated: February 1, 2024.

**Nathaniel L. Robinson,**

*Commander, U.S. Coast Guard, Captain of the Port Savannah.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 240201–0032]

RIN 0648–BM31

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is amending the Atlantic Large Whale Take Reduction Plan (Plan) to expand the boundaries of the seasonal Massachusetts Restricted Area (MRA) to include the wedge between State and Federal waters known as the Massachusetts Restricted Area Wedge (MRA Wedge). The MRA Wedge was seasonally closed to trap/pot fishing gear by emergency rulemaking in 2022 and 2023 to prevent the immediate risk to the North Atlantic right whale (*Eubalaena glacialis*, right whale) of mortality and serious injury caused by entanglement in fixed-gear buoy lines. Substantial observational evidence has documented the consistent presence of right whales within the MRA Wedge from February through April and aerial surveys have similarly documented the presence of aggregated fixed gear in the MRA Wedge during this same time period. Due to the co-occurrence of whales and buoy lines, both in high densities in this area during the specified times of year, this entanglement risk is expected to recur annually. This action will address this

gap in protection between seasonally closed State and Federal waters and reduce the incidental mortality and serious injury of right whales, fin whales (*Balaenoptera physalus*), and humpback whales (*Megaptera novaeangliae*) in commercial trap/pot fisheries. There is a specific carve out for this rule in the Consolidated Appropriations Act, 2023 (CAA).

**DATES:** This rule is effective March 8, 2024.

**ADDRESSES:** Copies of this action, including the Final Environmental Assessment (EA) and the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared in support of this action, are available via the internet at <https://www.regulations.gov/> or by contacting Jennifer Goebel (see **FOR FURTHER INFORMATION CONTACT** below).

Several of the background documents for the Plan and the take reduction planning process can also be downloaded from the Plan website (<https://www.fisheries.noaa.gov/ALWTRP>). Information on the analytical tools used to support the development and analysis of the final regulations can be found in the EA and appendices. The complete text of current regulations implementing the Plan can be found in 50 CFR 229.32 or downloaded from the Plan's website, along with outreach compliance guides to current regulations.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Goebel, 978–281–9175, [jennifer.goebel@noaa.gov](mailto:jennifer.goebel@noaa.gov), Colleen Coogan, 978–281–9181, [colleen.coogan@noaa.gov](mailto:colleen.coogan@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

The right whale population has been in decline since 2010, with the most recent published estimate of right whale population size in 2022 at 356 whales (95 percent confidence interval: 346–363) (Linden 2023) with a strong male bias (Hayes *et al.* 2023, Pace *et al.* 2017, Pace 2021). The steep population decline is a result of high levels of human-caused mortality from entanglement in fishing gear and vessel strikes in both the United States and Canada. An Unusual Mortality Event (UME) was declared for the population in 2017, due to high rates of documented vessel strikes and entanglement in fishing gear. As of January 18, 2024, the UME includes 36 detected mortalities (17 in 2017, 3 in 2018, 10 in 2019, 2 in 2020, 2 in 2021, 0 in 2022, and 2 in 2023). In addition, 35 serious injuries were documented (6 in 2017, 6 in 2018, 3 in 2019, 6 in 2020,

<sup>1</sup> These notifications of enforcement of the regulation can be found at: <https://regulations.gov> by searching for docket number USCG–2024–0106, and USCG–2024–0085.