

officer must issue the visa, refuse the visa under INA 212(a) or 221(g) or other applicable law or, pursuant to an outstanding order under INA 243(d), discontinue granting the visa.

\* \* \* \* \*

■ 6. Add § 42.84 to read as follows:

**§ 42.84 Discontinuance of Granting Immigrant Visa Pursuant to INA 243(d).**

(a) *Grounds for discontinuance of granting a visa.* Consular officers in a country subject to an order by the Secretary under INA 243(d) shall discontinue granting immigrant visas for categories of immigrant visas specified in the order of the Secretary (or his or her designee), and pursuant to procedures dictated by the Department.

(b) *Discontinuance procedure—(1) Applications refused or discontinued only.* Starting on the day the Secretary's (or designee's) order to discontinue granting visas takes effect (effective date), no visas falling within the scope of the order, as described by the order, may be issued in the referenced country to an applicant who falls within the scope of the order, except as otherwise expressly provided in the order or related Department instructions. Beginning on the effective date, a consular officer must refuse the visa if the individual is not eligible for the visa under INA 212(a), INA 221(g), or other applicable law, but if the applicant is otherwise eligible must process the application by discontinuing granting, regardless of when the application was filed, if the applicant falls within the scope of the order and no exception applies. The application processing fee will not be refunded. The requirement to discontinue issuance may not be waived, and continues until the sanction is terminated as described below. In the case of diversity immigrant selectees applying under INA 203(c), if the discontinuance of granting has not been lifted by the end of the fiscal year, the applicant will not be eligible for a diversity visa for that fiscal year, regardless of the status of the diversity immigrant visa application at the time 243(d) sanctions were imposed.

(2) *Geographic applicability.* Visa sanctions under INA 243(d) only apply to visa issuance in the country that is sanctioned. If a consular officer has a reason to believe that a visa applicant potentially subject to INA 243(d) sanctions is applying at a post outside the sanctioned country to evade visa sanctions under INA 243(d), (e.g., the applicant provides no credible explanation for applying outside the country) the consular officer will transfer the case to the consular post in the consular district where INA 243(d)

sanctions apply, review any other applicable Department instructions and proceed accordingly. When cases are transferred to a consular district where INA 243(d) sanctions apply, the adjudication will be subject to the discontinuation of issuance under the sanctions.

(b) *Termination of sanction.* The Department shall notify consular officers in an affected country the sanction under INA 243(d) has been lifted. After notification, normal consular operations may resume consistent with these regulations and guidance from the Department. Once the sanction under INA 243(d) is lifted, no new application processing fees are required in cases where issuance has been discontinued pursuant to an INA 243(d) order, and consular officers in the affected post must adjudicate the visa application consistent with regulations and Department guidance. Consular officers may require applicants to update the visa application forms, must conduct any necessary adjudicatory steps, and may re-interview to determine eligibility. In numerically controlled immigrant visa categories, an applicant's immigrant visa priority date may no longer be current once sanctions under INA 243(d) are lifted, in which case the applicant must await visa availability.

Dated: April 11, 2019

**Carl C. Risch,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

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**BILLING CODE 4710-06-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG-2019-0160]

RIN 1625-AA00

**Safety Zone; Sabine River, Orange, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Sabine River, extending the entire width of the river, adjacent to the public boat ramp located in Orange, TX. This action is necessary to protect persons and vessels from hazards associated with a high-speed Jet Ski race competition in Orange, TX. Entry of vessels or persons into this zone is prohibited unless

authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative.

**DATES:** This rule is effective from 10 a.m. on April 27, 2019 through 6 p.m. on April 28, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0160 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 Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409-719-5086, email [Scott.K.Whalen@uscg.mil](mailto:Scott.K.Whalen@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
COTP Captain of the Port Marine Safety Unit Port Arthur  
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 an NPRM with respect to this rule because it is impracticable. This safety zone must be established by April 27, 2019 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the dates of the high-speed races and compromise public safety.

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 protect persons and vessels from the potential

hazards during a high-speed Jet Ski race on a navigable waterway.

### 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 COTP has determined that the potential hazards associated with high-speed Jet Ski races are a safety concern for persons and vessels operating on the Sabine River. Possible hazards include risks of injury or death from near or actual contact among participant vessels and spectators or mariners traversing through the safety zone. This rule is needed to protect all waterway users, including event participants and spectators, before, during, and after the scheduled event.

### IV. Discussion of the Rule

This rule establishes a temporary safety zone from 10 a.m. through 6 p.m. each day from April 27, 2019 through April 28, 2019. The safety zone covers all navigable waters of the Sabine River, extending the entire width of the river, adjacent to the public boat ramp located in Orange, TX bounded by the Navy Pier One between latitude 30°05'50" N and latitude 30°05'33" N. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels, in the navigable waters of the Sabine River during high-speed Jet Ski races and will include breaks and opportunity for vessels to transit through the regulated area.

No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. They may be contacted on VHF-FM channel 13 or 16, or by phone at by telephone at 409-719-5070. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". The "official patrol vessels" consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the zone. All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators.

Spectator vessels desiring to transit the zone may do so only with prior approval of the COTP or a designated representative and when so directed by that officer must be operated at a minimum safe navigation speed in a manner that will not endanger any other vessels. No spectator vessel shall

anchor, block, loiter, or impede the through transit of official patrol vessels in the zone during the effective dates and times, unless cleared for entry by or through the COTP or a designated representative. Any spectator vessel may anchor outside the zone, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the zone in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the zone and remain moored through the duration of the event.

The COTP or a designated representative may forbid and control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the zone, citation for failure to comply, or both.

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative will terminate enforcement of the safety zone at the conclusion of the event.

### 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, and duration of the safety zone. This safety zone encompasses a less than half-mile stretch of the Sabine River for eight hours on each of two days. Moreover, the Coast Guard will issue Broadcast

Notice to Mariners (BNMs) via VHF-FM marine channel 16 about the zone, daily enforcement periods will include breaks that will provide an opportunity for vessels to transit through the regulated area, and the rule allows 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 temporary 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 vessel owners or operators.

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 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 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 Directive 023–01 and Commandant Instruction M16475.1D, 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 lasting 8 hours on each of two days that will prohibit entry on less than a one-half mile stretch of the Sabine 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. 01. 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 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 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 AREA 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.T08–0160 to read as follows:

#### § 165.T08–0160 Safety Zone; Sabine River, Orange, Texas.

(a) *Location.* The following area is a safety zone: All navigable waters of the Sabine River, extending the entire width of the river, adjacent to the public boat ramp located in Orange, TX bounded by the Navy Pier One between latitude 30°05'50" N and latitude 30°05'33" N.

(b) *Effective period.* This section is effective from 10 a.m. on April 27, 2019 through 6 p.m. on April 28, 2019.

(c) *Enforcement periods.* This section will be enforced from 10 a.m. through 6 p.m. daily. Breaks in the racing will occur during the enforcement periods, which will allow for vessels to pass through the safety zone. The Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative will provide notice of breaks as appropriate per paragraph (e) of this section.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of vessels or persons into this zone is prohibited unless authorized by the COTP or a designated representative. They may be contacted on VHF–FM channel 13 or 16, or by phone at by telephone at 409–719–5070. A designated representative may be a Patrol Commander (PATCOM). The

PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM”.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(6) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(7) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of

enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: April 10, 2019.

**Jacqueline Twomey,**

*Captain, U.S. Coast Guard, Captain of the Port Marine Safety Unit Port Arthur.*

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**BILLING CODE 9110-04-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 414**

[CMS-6080-N2]

**Medicare Program; Update to the Required Prior Authorization List of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Items That Require Prior Authorization as a Condition of Payment**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Update to list.

**SUMMARY:** This document announces the addition of 12 Healthcare Common Procedure Coding System (HCPCS) codes to the Required Prior Authorization List of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Items that require prior authorization as a condition of payment.

**DATES:** Phase one of implementation is effective on July 22, 2019. Phase two of implementation is effective on October 21, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Virginia Boulin, (410) 786-1079.

Erica Ross, (410) 786-7480.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Sections 1832, 1834, and 1861 of the Social Security Act (the Act) establish that the provision of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) are covered benefits under Part B of the Medicare program.

Section 1834(a)(15) of the Act authorizes the Secretary to develop and periodically update a list of DMEPOS items that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization and to develop a prior authorization process for these items.

In the December 30, 2015 final rule (80 FR 81674) titled “Medicare Program; Prior Authorization Process for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies,” we implemented section 1834(a)(15) of the Act by establishing an initial Master List (called the Master List of Items Frequently Subject to Unnecessary Utilization) of certain DMEPOS that the Secretary determined, on the basis of prior payment experience, are frequently subject to unnecessary utilization and by establishing a prior authorization process for these items. In the same final rule, we also stated that we would inform the public of those DMEPOS items on the Required Prior Authorization List in the **Federal Register** with 60-day notice before implementation. The Required Prior Authorization List specified in § 414.234(c)(1) is selected from the Master List of Items Frequently Subject to Unnecessary Utilization (as described in § 414.234(b)(1)), and items on the Required Prior Authorization List require prior authorization as a condition of payment.

In addition to the prior authorization process for certain DMEPOS items that we established under section 1834(a)(15) of the Act, on September 1, 2012, we implemented the Medicare Prior Authorization for Power Mobility Devices (PMDs) Demonstration that would operate for a period of 3 years (September 1, 2012 through August 31, 2015). This demonstration was established under section 402(a)(1)(J) of

the Social Security Amendments of 1967 (42 U.S.C. 1395b-1(a)(1)(J)), which authorizes the Secretary to conduct demonstrations designed to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services provided under the Medicare program. The demonstration was initially implemented in California, Florida, Illinois, Michigan, New York, North Carolina, and Texas. These states were selected for the demonstration based upon their history of having high levels of improper payments and incidents of fraud related to PMDs. On October 1, 2014, we expanded the demonstration to 12 additional states (Pennsylvania, Ohio, Louisiana, Missouri, Washington, New Jersey, Maryland, Indiana, Kentucky, Georgia, Tennessee, and Arizona) that had a history of high expenditures and improper payments for PMDs based on 2012 billing data. On July 15, 2015, we announced we were extending the demonstration for 3 years, through August 31, 2018. The demonstration ended as scheduled on August 31, 2018.

In a June 5, 2018 **Federal Register** document, we announced that, effective September 1, 2018, we would add 31 HCPCS codes that were a part of the PMD demonstration to the Required Prior Authorization List (83 FR 25947).

**II. Provisions of the Document**

The purpose of this document is to inform the public that we are updating the Required Prior Authorization List of DMEPOS items that require prior authorization as a condition of payment to include seven additional power mobility devices and five pressure reducing support surfaces. These 12 items are on the Master List of Items Frequently Subject to Unnecessary Utilization. To assist stakeholders in preparing for implementation of the prior authorization program, we are providing 90 days’ notice.

The following seven HCPCS codes for PMDs are being added to the Required Prior Authorization List:

HCPCS code	Description
K0857 .....	Power wheelchair, group 3 standard, single power option, captains chair, patient weight capacity up to and including 300 pounds.
K0858 .....	Power wheelchair, group 3 heavy duty, single power option, sling/solid set/back, patient weight 301 to 450 pounds.
K0859 .....	Power wheelchair, group 3 heavy duty, single power option, captains chair, patient weight capacity 301 to 450 pounds.
K0860 .....	Power wheelchair, group 3 heavy duty, single power option, sling/solid seat/back, patient weight capacity 451 to 600 pounds.
K0862 .....	Power wheelchair, group 3 heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds.
K0863 .....	Power wheelchair, group 3 heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 451 to 600 pounds.
K0864 .....	Power wheelchair, group 3 extra heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 601 pounds or more.