



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0831]

RIN 1625-AA00

Safety Zone, Tennessee River between Mile 4.8 to 5.8;

Ledbetter, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Tennessee River between mile 4.8 and 5.8. This safety zone is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with using explosives to demolish the section of the bridge that is over the navigation channel and the resulting recovery of the section from the waterway. Entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until October 31, 2014. For the purposes of enforcement, actual

notice will be used from September 16, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0831]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Chief Heather Norman, Marine Safety Unit Paducah Waterways Management Branch, U.S. Coast Guard; telephone 270-442-1621, e-mail

[Heather.Norman@uscg.mil](mailto:Heather.Norman@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl F.

Collins, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

APA	Administrative Procedure Act
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BNM	Broadcast Notice to Mariners
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LNM	Local Notice to Mariners
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final 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.

On September 16, 2014 demolition will begin on the George Rogers Clark Memorial Bridge at mile 5.3 Tennessee River, creating a hazardous condition. This situation requires immediate emergency safety measures to protect persons and property, and a safety zone is in effect to stop all vessel traffic from transiting from mile 4.8 to mile 5.8 Tennessee River. Deviation from this rule may be requested from the Captain of the Port and requests to

deviate and transit through this area may be permitted on a case-by-case basis. Once demolition and recovery of bridge debris is completed, the safety zone will be canceled.

Delaying this rulemaking to provide a comment period before implementing the necessary safety zone would be contrary to the public interest by delaying the immediate action needed to protect persons, property, and infrastructure from the potential damage and safety hazards associated with the demolition of this bridge.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this emergency rule effective less than 30 days after publication in the Federal Register. Providing 30 days notice would be contrary to public interest because immediate action is needed to protect life and property from the hazards associated safety concerns of the George Rogers Clark Memorial Bridge demolition at mile 5.3 Tennessee River.

#### B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively

authorize the Coast Guard to establish and define safety zones.

The purpose of this safety zone is to protect persons and vessels from the bridge demolition operations, which pose a significant safety hazard at mile 5.3 Tennessee River. For this reason, the Coast Guard is prohibiting entry into this zone by all vessels during the enforcement period unless authorized by the COTP Ohio Valley or a designated representative.

#### C. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on the Tennessee River from mile 4.8 to 5.8, extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons unless specifically authorized by the COTP Sector Ohio Valley or a designated representative.

This rule is effective and enforceable with actual notice on September 16, 2014 through October 31, 2014, or until all demolition debris has been removed from the waterway and deemed to no longer pose a threat to the public. At that time the safety zone will be canceled. Any exceptions to these operational restrictions must be authorized by the COTP Ohio Valley or a designated

representative. The COTP or a designated representative may be contacted by telephone at 502-779-5422.

#### D. 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 or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule establishes a temporary safety zone for vessels on all waters of the Tennessee River, extending the entire width from mile 4.8 to 5.8. Notifications to the marine community will be made through Broadcast Notices to Mariners (BNM). The impacts on routine navigation are expected to be minimal as the restrictions will be enforced only as necessary while demolition and debris recovery operations of the George Rogers Clark Memorial Bridge, mile

5.3 Tennessee River, are conducted. After demolition and debris recovery operations are complete, the safety zone will be canceled. Additionally, deviation from the safety zone restriction may be requested from the COTP Ohio Valley or designated representative and will be considered on a case-by-case basis.

## 2. 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 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. 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.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Tennessee River from mile 4.8 to 5.8 from September 16, 2014 through October 31, 2014. This safety zone will not have a significant economic impact on a substantial number of small entities. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels, and the

restrictions will be enforced only as necessary while the demolition and debris removal of the George Rogers Clark Memorial Bridge is being conducted. When this is completed, the safety zone will be canceled. Deviation from the safety zone restriction may be requested from the COTP Ohio Valley or designated representative and will be considered on a case-by-case basis.

### 3. 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. 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, above.

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.

#### 4. 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).

#### 5. Federalism

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 determined that this rule does not have implications for federalism.

#### 6. 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.

#### 7. 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.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

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.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of a safety zone in response to an emergency situation. The safety zone is implemented to protect persons and property due to a structurally deficient bridge at mile 5.3 Tennessee River. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the ADDRESSES section.

#### 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: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. A new temporary § 165.T08-0831 is added to read as follows:

§ 165.T08-0831 Safety Zone, Tennessee River MM 4.8 to 5.8; Ledbetter, KY.

(a) Location. The following area is a safety zone: all waters of the Tennessee River from mile 4.8 to 5.8, extending the entire width of the river.

(b) Effective dates. This safety zone is effective and enforceable with actual notice on September 16, 2014 through October 31, 2014 or until the demolition and debris removal of the George Rogers Clark Memorial Bridge is completed and no longer poses a threat to the public. At that time the safety zone will be canceled.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

(2) All persons and vessels shall comply with the instructions of the COTP and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) Persons or vessels may request deviation from the safety zone restriction prescribed under paragraph (c)(1) of this section from the COTP Ohio Valley or a designated representative who may be a commissioned, warrant, or petty officer of the Coast Guard. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7465 or on VHF-FM channel 16.

(d) Informational broadcasts. The COTP, Ohio Valley or a designated representative will inform the public through broadcast notices to mariners (BNM) of the effective period for the safety zone and of any changes in the effective period, size, or restrictions of the safety zone.

Dated: September 16, 2014

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R.V. Timme,  
Captain, U. S. Coast Guard,  
Captain of the Port Ohio Valley

[FR Doc. 2014-23653 Filed 10/02/2014 at 8:45 am;  
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