



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0198]

RIN 1625-AA00

Safety Zone; Ohio River Between Mile 618.5 and Mile 619.5;
Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River between mile 618.5 and mile 619.5 on June 27, 2015. This safety zone is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with the Riverview Park Independence Festival firework display. Deviation from 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 and will be enforced through actual notice from 10:00 p.m. through 10:30 p.m. on June

27, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0198]. 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 Petty Officer Cody Robinson, U.S. Coast Guard; telephone 502-779-5347, e-mail James.c.Robinson@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 Procedures Act
BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security

FR Federal Register
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. Providing a full 30 days notice is unnecessary and contrary to the public interest as it would delay the effectiveness of the temporary safety zone until after the planned fireworks event. Immediate action is needed to protect vessels and mariners from the safety hazards associated with aerial fireworks displays over a waterway when large concentrations of spectators and vessel traffic are expected. The Coast Guard will give actual notice to the public and maritime community that the safety zone will be in effect and of the enforcement period via broadcast notices to mariners (BNM).

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. Immediate action is needed to protect vessels and mariners from the safety hazards associated with aerial fireworks displays over a waterway when large concentrations of spectators are expected. The Coast Guard will give actual notice to the public and maritime community that the safety zone will be in effect and of the enforcement period via BNM.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 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 which collectively authorize the Coast Guard to establish and define safety zones.

The purpose of this safety zone is to protect life and property from the hazards associated with and resulting from the Riverview Park Independence Festival firework display. The rule is necessary due to significant safety hazards associated with an aerial fireworks display over the waterway when a large concentration of spectators and vessel traffic are expected. Establishing the safety zone to extend from mile 618.5 to mile 619.5 on the Ohio River

is necessary for the Coast Guard to maintain navigational safety on the river.

C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary safety zone on the Ohio River between mile 618.5 and mile 619.5, extending the entire width of the Ohio River. Transit into and through this area is prohibited beginning at 10:00 p.m. through 10:30 p.m. on June 27, 2015 or until the Riverview Park Independence Festival firework display has concluded, whichever occurs earlier. Deviation from this temporary safety zone is prohibited unless specifically authorized by the COTP Ohio Valley, or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7465 or can be reached by VHF-FM channel 16.

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 Ohio River from mile 618.5 to mile 619.5. The safety zone will be established for less than one hour. Due to the limited scope and short duration of the temporary safety zone, the impacts on routine navigation are expected to be minimal.

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 Ohio River, from 10:00 p.m. to 10:30 p.m. on June 27, 2015. This temporary safety zone will not have a significant economic impact on a substantial number of small entities due to its limited scope and short duration. Additionally, requests to deviate from the rule will be considered on a case-by-case basis. Notifications to the marine community will be made through BNM, local notice to mariners, and communications with local waterway users. Notices of changes to the safety zone and effective times will also be made.

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 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 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 is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. Because this safety zone is established in response to a temporary situation and is less than one week in duration, an environmental analysis checklist and a categorical exclusion determination are not required.

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; 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.

2. A new temporary § 165.T08-0198 is added to read as follows:

§ 165.T08-0198 Safety Zone; Ohio River between mile 618.5 and mile 619.5, Louisville, KY.

(a) Location. The following area is a safety zone: all waters of the Ohio River between mile 618.5 and mile 619.5, Louisville, KY, extending the entire width of the Ohio River.

(b) Effective dates. This safety zone is effective and will be enforced through actual notice from 10:00 p.m. through 10:30 p.m. on June 27, 2015.

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

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP Ohio Valley or a designated representative. They may be contacted on VHF-FM channel 16 or by telephone at 1-800-253-7465.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP Ohio Valley or designated representative.

(d) Informational broadcasts. The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the temporary safety zone as well as any changes in the dates and times of enforcement.

Dated: June 9, 2015.

R. V. Timme,
Captain, U. S. Coast Guard,
Captain of the Port Ohio Valley.
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Date: 6/29/2015]