



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0992]

RIN 1625-AA00

Safety Zone; Arkansas River, Little Rock, AR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Arkansas River beginning at mile marker 118.6 and ending at mile marker 119.6. The safety zone is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with the demolition of the Broadway Bridge. This rulemaking prohibits persons and vessels from entering the safety zone area during certain operations unless authorized by the Captain of the Port Memphis or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 10 p.m. on December 1, 2016. For the purposes of enforcement, actual notice will be used from 10 p.m. on October 28, 2016 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0992 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 Petty Officer Todd Manow, Sector Lower Mississippi River Prevention Department, U.S. Coast Guard; telephone 901-521-4813, email Todd.M.Manow@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
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 a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard had previously established a safety zone for this bridge demolition, [Docket Number USCG-2016-0885], and enforced it from October 1, 2016 until November 1, 2016. The Coast Guard was recently made aware by the contractor that demolition activities would not be completed in the original timeline. Immediate action is needed to respond to potential safety hazards related to a bridge demolition on or over this

navigable waterway. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by November 1, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with demolition of the Broadway Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with a bridge demolition starting November 1, 2016 will be a safety concern for anyone desiring to transit this section of the Arkansas River. This rule is needed to protect personnel, vessels, and infrastructure in the navigable waters within the safety zone while bridge demolition is occurring.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. on November 1, 2016 through 10 p.m. on December 1, 2016. The safety zone will cover all navigable waters within one half mile on either side of the Broadway Bridge, beginning at mile marker 118.6 and ending at mile marker 119.6. Vessels will be prohibited from entering the safety zone from 30 minutes prior to, until 30 minutes after, any blasting or large-scale removal operation that takes place on the Broadway Bridge; designated representatives will be on-scene to stop or reroute traffic during these evolutions. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. During the entire effective period of this safety zone,

regardless of operations, all vessel traffic will be required to maintain slowest speeds for safe navigation; marker buoys will be placed informing waterway users of a no-wake zone. This safety zone is intended to protect personnel, vessels, and infrastructure in these navigable waters while the bridge is being demolished.

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 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 Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size and location of the safety zone, a one-mile section of the Arkansas River in the vicinity of Little Rock, AR. Although in effect from November 1, 2016 until December 1, 2016, traffic will only be excluded from this safety zone from 30 minutes before until 30 minutes after any blasting or large-scale removal operation that takes place on the Broadway Bridge. During periods of non-exclusion, vessel traffic will be allowed to transit at slowest speeds for safe navigation through this safety zone. Moreover, the Coast Guard will issue Broadcast

Notice to Mariners via VHF-FM marine channel 16 about the zone 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 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 (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 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 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(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 month-long safety zone limiting vessel speed and intermittently prohibiting entry into a one-mile area of the Arkansas River adjacent to the Broadway Bridge during demolition operations. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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 AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 USC 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 § 165.35T08-0992 is added to read as follows:

§ 165.35T08-0992 Safety Zone; Arkansas River; Little Rock, AR.

(a) Location. All waters of the Arkansas River beginning at mile marker 118.6 and ending at mile marker 119.6 in the vicinity of Little Rock, AR.

(b) Periods of enforcement. This temporary safety zone will be enforced 30 minutes before until 30 minutes after any blasting or large-scale removal operation that takes place on the Broadway Bridge from 10 p.m. on October 28, 2016 through 10 p.m. on December 1, 2016.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this area during blasting or large-scale removal operations is prohibited unless authorized by the COTP or a designated representative. All persons and vessels permitted to deviate from the safety zone requirements, as well as enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(2) Buoys marked “No-Wake” will be placed along the navigation channel while this safety zone is in effect.

(3) Persons or vessels requiring entry into or passage through this safety zone during prohibited entry periods must request permission from the COTP or a designated representative. They may be contacted on VHF Channel 16 or at 1-866-777-2784.

(4) A “designated representative” of the COTP is any Coast Guard commissioned, warrant, or petty officer, or a Federal, State, or local law enforcement officer designated by the COTP to act on his behalf.

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

Dated: October 28, 2016

T. J. WENDT
Captain, U.S. Coast Guard
Captain of the Port
Memphis, Tennessee
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