



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0514]

RIN 1625-AA00

Safety Zone; Verdigris River, Catoosa, OK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Verdigris River. This action is necessary to provide for the safety of life on these navigable waters near Rogers Point Park, Catoosa, OK, during a fireworks display on July 1, 2017. The safety zone will cover all navigable waters between mile marker 444.0 and mile marker 444.5 in the Verdigris River. This rulemaking will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Memphis (COTP) or a designated representative.

DATES: This rule is effective from 9:30 p.m. until 10 p.m. on July 1, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0514 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 about this

rulemaking, call or email Petty Officer Todd Manow, Waterways Management, Sector Lower Mississippi River, 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 Memphis
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On March 20, 2017, the City of Catoosa notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. until 10 p.m. on July 1, 2017, as part of the shore side event, “Libertyfest.” The fireworks are to be launched from the left descending bank of the Verdigris River at mile marker 444.2, 500 yards downriver of the State Route 66 bridge in Catoosa, OK, located at the approximate geographic coordinates of 36°12.8’N, 095°43.0’W. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Memphis (COTP) has determined that potential hazards associated with the fireworks present a safety concern for anyone within the area on the Verdigris River between mile marker 444.0 and mile marker 444.5.

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. Although the event sponsor originally submitted notice to the Coast Guard on March 20, 2017, final details of the event and safety zone requirements were not finalized until June 2, 2017. It is impracticable to publish an NPRM because we must establish this safety zone by July 1, 2017, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 the public interest because immediate action is needed to protect the persons and property from the dangers associated with the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with this fireworks event would be a safety concern for anyone on the Verdigris River between mile marker 444.0 and mile marker 444.5. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure the safety of life and vessels on the navigable waters before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. to 10 p.m. on July 1, 2017. The safety zone will cover all navigable waters of the Verdigris River from mile marker 444.0 to mile marker 444.5 in the vicinity of Rogers Point Park in Catoosa, OK. The safety zone is intended to ensure the safety of waterway users on these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

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 (E.O.) 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. E.O. 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 E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be prohibited from entering this safety zone, which will impact a small designated area of the Lower Mississippi River for 30 minutes during the evening of Saturday, July 1, 2017. This safety zone may end early if

conditions allow, as determined by the COTP or a designated representative. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule will allow 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 E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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.

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 proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination 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 that will prohibit entry into the zone unless authorized by the COTP or a designated representative lasting 30 minutes on one half mile of the Verdigris River located just downriver of the State Route 66 Bridge in Catoosa, OK. It is categorically excluded from further review under paragraph L60 of Appendix A of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is 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 proposed 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 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. Add temporary § 165.T08-0514 to read as follows:

§ 165.T08-0514 Safety Zone; Verdigris River, Catoosa, OK.

(a) **Location.** The following area is a safety zone: all navigable waters of the Verdigris River from mile marker 444.0 to mile marker 444.5 in the vicinity of the left descending bank of the Verdigris River at mile marker 444.2, approximately 500 yards downriver of the State Route 66 bridge in Catoosa, OK at approximate position 36°12.8'N, 095°43.0'W.

(b) **Effective date.** The safety zone will be in effect from 9:30 p.m. until 10 p.m. on July 1, 2017.

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

(2) Any vessel desiring to enter this safety zone must first obtain permission from the COPT or a designated representative, who may be contacted on VHF-FM Channel 16 or by telephone at 866-777-2784.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement periods for the safety zone.

Dated: June 13, 2017

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

[FR Doc. 2017-13428 Filed: 6/26/2017 8:45 am; Publication Date: 6/27/2017]