



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0441]

RIN 1625-AA00

Safety Zone; Ohio River Mile Marker 27.8 to Mile Marker 28.2, Vanport, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River from mile marker 27.8 to mile marker 28.2 near the Vanport Highway Bridge. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by two separately occurring cargo movements near the Vanport Highway Bridge in Vanport, PA. Entry of vessels or persons into the zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 6 p.m. on May 27, 2018. For the purposes of enforcement, actual notice will be used from 8 a.m. on May 12, 2018 through [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-2018-0441 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 e-mail Petty Officer Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412-221-0807, e-mail Jennifer.L.Haggins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Marine Safety Unit Pittsburgh
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 8, 2018, Bechtel notified the Coast Guard that there will be two cargo movements in the vicinity of the Vanport Highway Bridge that could create potential hazards for the bridge’s structural integrity over the next several weeks. 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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We

did not receive notice of these cargo operations until May 8, 2018. The safety zone must be established by May 12, 2018, 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 zones until after the dates of the cargo operations 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 contrary to the public interest because immediate action is needed to protect the public and vessels from the potential safety hazards associated with the cargo movement operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Marine Safety Unit Pittsburgh (COTP) has determined that potential hazards associated with two cargo movement operations that will take place between May 12, 2018 and May 27, 2018 will be a safety concern for anyone within a half-mile stretch of the Ohio River. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters before, during, and after the cargo movements.

IV. Discussion of the Rule

This rule establishes a safety zone for all navigable waters of the Ohio River from mile marker 27.8 to mile marker 28.2. It is effective from 8 a.m. on May 12, 2018 through 6 p.m. on May 27, 2018. Entry into the safety zone during the enforcement period is prohibited unless authorized by the COTP or a designated representative.

Subject to the cargo delivery intervals and potential inclement weather, the periods of enforcement will be 30 minutes prior to, during, and 1 hour after any cargo movement near the Vanport Highway Bridge. The Coast Guard was informed that the two cargo movement operations would take place during daylight hours only and last approximately 4 hours each. A safety vessel will coordinate all vessel traffic during the enforcement periods. The COTP or a designated representative will inform the public through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), and/or Marine Safety Information Broadcasts (MSIBs), or through other means of public notice, as appropriate, at least 3 hours in advance of the enforcement periods. The duration of the zones is intended to protect personnel, vessels, and the marine environment in these navigable waters during cargo movement operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Marine Safety Unit Pittsburgh. They may be contacted on VHF-FM Channel 16 or 67. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

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, duration, and time-of-year of the safety zones. This safety zone will be enforced for a period of approximately four hours on two separate days between May 12, 2018 and May 27, 2018 on less than a half mile of the Ohio River. The Coast Guard will issue LNMs, BNMs, and MSIBs, about the temporary safety zone, and this rule allows vessels to seek permission from the COTP or a designated representative to enter the safety zones.

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 these safety zones 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.

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 that prohibits entry on a half-mile stretch of the Ohio River for 4 hours between May 12, 2018 and May 27, 2018. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination will be made 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

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 § 165.T08-0441 to read as follows:

§ 165.T08-0441 Safety Zone; Ohio River mile marker 27.8 to mile marker 28.2, Vanport, PA.

(a) Location. The following area is a safety zone: All navigable waters of the Ohio River from mile marker (MM) 27.8 to MM 28.2.

(b) Effective period. This section is effective from 8 a.m. on May 12, 2018 through 6 p.m. on May 27, 2018.

(c) Enforcement period. Subject to cargo delivery intervals and potential inclement weather, this section will be enforced on two separate occasions during the effective period. Each will be 30 minutes prior to, during, and 1 hour after any cargo movement in the vicinity of the Vanport Highway Bridge. The Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative will inform the public of the enforcement period through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), and/or Marine Safety Information Broadcasts (MSIBs) or through other means of public notice at least 3 hours in advance of the enforcement

period. A safety vessel will coordinate all vessel traffic during the enforcement of these safety zones.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into the zone is prohibited unless authorized by the COTP or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh.

(2) Vessels requiring entry into the safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67.

(3) All persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(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 LNMs, BNMs, or MSIBs as appropriate.

Dated: May 11, 2018

L. MCCLAIN, JR.,
Commander, U.S. Coast Guard,
Captain of the Port Marine Safety Unit Pittsburgh.

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