



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1030]

RIN 1625-AA00

**Safety Zones; Pipeline Construction, Tennessee River Miles 465 to 466,
Chattanooga, TN**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Tennessee River from mile marker (MM) 465 to MM 466. This safety zone is necessary to protect persons, property, and the marine environment from potential hazards associated with the construction of an underground pipeline. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 7:30 p.m. on January 25, 2019. For the purposes of enforcement, actual notice will be used from November 19, 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-2018-1030 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 Nicholas Jones, Marine Safety Detachment Nashville, U.S. Coast Guard; telephone 615-736-5421, email MSDNashville@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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| CFR | Code of Federal Regulations |
| COTP | Captain of the Port Sector Ohio Valley |
| DHS | Department of Homeland Security |
| FR | <i>Federal Register</i> |
| 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 (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 must establish this safety zone by November 19, 2018, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. On November 1, 2018, Reynolds Construction, LLC notified Marine Safety Detachment Nashville that their underwater pipeline construction operations at mile marker 465.2 of the Tennessee River would be ready to commence on

November 19, 2018. Reynolds Construction estimates that the work will take 10 weeks, excluding November 22-25, December 8-9, December 22- 25, and December 29-January 1.

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 the public interest because immediate action is needed to respond to potential safety hazards associated with the underwater pipeline construction.

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 Sector Ohio Valley (COTP) has determined that potential hazards associated with the underwater blasting and pipeline construction will be a safety concern for anyone on a one-mile stretch of the Tennessee River. This rule is necessary to protect persons, vessels, and the marine environment during the construction operations.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from mile marker (MM) 465 to MM 466 on the Tennessee River in Chattanooga, TN from 6:30 a.m. on November 19, 2018, through 7:30 p.m. on January 25, 2019. The safety zone will be enforced from 6:30 a.m. through 7:30 p.m. each day, excluding November 22-25, December 8-9, December 22-25, and December 29-January 1. A safety vessel will coordinate all vessel traffic during the enforcement periods. The COTP may terminate enforcement of this rule if the work is finished earlier. The duration of the safety zone is intended to protect persons, vessels, and the marine environment during the construction operations.

No vessel or person is 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 Sector Ohio Valley, U.S. Coast Guard. They may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times and dates for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

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, it has not been reviewed by the Office of Management and Budget, 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-day of the safety zone. This safety zone prohibits transit on a one-mile stretch of the Tennessee River for about 13 hours, on workdays only, during a ten-week period.

The rule also 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 temporary 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 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 prohibits transit on a one-mile stretch of the Tennessee River for about 13 hours on workdays only during a ten-week period. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is 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

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the U. S. 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. 0170.2.

2. Add § 165.35T08-1030 to read as follows:

§ 165.35T08-1030 Safety Zone; Pipeline Construction, Tennessee River, Miles 465 to 466, Chattanooga, TN.

(a) Location. The following area is a safety zone: all navigable waters of the Tennessee River from mile marker (MM) 465.0 to MM 466.0, Chattanooga, TN.

(b) Effective period. This section is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 7:30 p.m. on January 25, 2019. For the purposes of enforcement, actual notice will be used from November 19, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) Enforcement periods. This section will be enforced each day during the effective period from 6:30 a.m. through 7:30 p.m., excluding November 22-25, December 8-9, December 22- 25, and December 29-January 1. The Captain of the Port Sector Ohio Valley (COTP) may terminate enforcement of this section if the work is finished earlier.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this area is prohibited unless authorized by 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 Sector Ohio Valley, U.S. Coast Guard.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the COTP or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

(3) A designated safety vessel will coordinate all vessel traffic during the enforcement of this safety zone. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all directions issued by the COTP or the designated representative.

(e) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement times and dates for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: November 19, 2018

M. B. ZAMPERINI,
CAPTAIN, U.S. Coast Guard,
Captain of the Port Sector Ohio Valley

[FR Doc. 2018-25536 Filed: 11/21/2018 8:45 am; Publication Date: 11/23/2018]