



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG- 2019- 0849]**

**RIN 1625-AA00**

**Safety Zone; Kanawha River, Charleston, WV**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters on the Kanawha River from mile marker (MM) 60.8 to MM 61.3. The safety zone is needed to protect personnel, vessels, and the marine environment from hazards created by repair work on several large power lines crossing the river. Entry of vessels or persons into this zone is prohibited unless specifically 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] until through November 23, 2019. For the purposes of enforcement, actual notice will be used from October 19, 2019 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule will be enforced from 9 a.m. through 3 p.m. on Mondays through Saturdays, and from 7 a.m. through 11 p.m. on Sundays from October 19,

2019 through November 23, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0849 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 MST3 Wesley Cornelius, MSU Huntington, U.S. Coast Guard; 304-733-0198, Wesley.P.Cornelius@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
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 (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 because we must establish the safety zone by October 19, 2019 and lack sufficient time to request

public comments and respond to those comments before the zone must be established.

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 respond to the potential safety hazards associated with the power line crossing on the Kanawha River between mile marker (MM) 60.8 and MM 61.3.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the power line crossing on October 19 through November 23, 2019, will be a safety concern for anyone on the Kanawha River from mile marker (MM) 60.8 to MM 61.3. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the power line are being replaced.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 9 a.m. through 3 p.m. on Mondays through Saturdays, and from 7 a.m. through 11 p.m. on Sundays from October 19, 2019 through November 23, 2019. The safety zone covers all navigable waters from MM 60.8 to MM 61.3 on the Kanawha River. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters for the duration of the power line crossing is being repaired. No

vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Persons and vessels permitted to enter the safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a 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 and location of the safety zone. This rule involves a safety zone lasting for less than a month and covering the limited area of less than two miles. In addition, vessel traffic will be able to reach out to the safety boat on scene to coordinate safe passage through

the safety zone which will impact one-half mile stretch of the Kanawha River. The Coast Guard will publish a Local Notice to Mariners (LNMs), and issue a Broadcast Notice to Mariners (BNMs) via VHF-FM marine channel 16 about 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 call or email 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 call or email 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 Environmental Planning COMDTINST 5090.1 (series), 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 lasting from October 19, 2019 through November 23, 2019 that will limit access of the Kanawha River from MM 60.8 to MM 61.3. It is categorically excluded from further review under paragraph L60(d) in Table 3-1 of U.S. Coast Guard

Environmental Planning Implementing Procedures. 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 call or email 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 (waters), 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:** 46 U.S.C. 70034, 70051; 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.T08-0849 to read as follows:

**§ 165.T08-0849 Safety Zone; Kanawha River, Charleston, WV.**

(a) Location. The following area is a safety zone: all navigable waters of the Kanawha River from Mile Marker (MM) 60.8 to MM 61.3 near Charleston,

WV.

(b) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465.

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

(c) Effective period. This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until through November 23, 2019. For the purposes of enforcement, actual notice will be used from October 19, 2019 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(d) Enforcement periods. This section will be enforced from 9 a.m. through 3 p.m. on Monday through Saturday, and from 7 a.m. through 11 a.m. on Sundays, from October 19, 2019, through November 23, 2019.

(e) Information broadcasts. The COTP or a designated representative will inform the public when the safety zone is being enforced via a Local Notice to Mariners (LNMs) and a Broadcast Notice to Mariners (BNMs) via VHF-FM marine channel 16.

Dated: October 18, 2019

M. A. WIKE

Commander, U.S. Coast Guard,

Acting Captain of the Port Sector Ohio Valley

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