



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0118]

RIN 1625-AA11

Regulated Navigation Area; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh,

PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area for certain waters of the Monongahela, Allegheny, and Ohio Rivers at Pittsburgh, Pennsylvania. This action is necessary to provide for the safety of persons, vessels, and the marine environment on these navigable waters due to the high volume of vessels navigating the area. This rule will prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting more than 100 feet from any river bank in the regulated navigation area unless authorized in order to reduce vessel congestion and provide for safe passage of transiting vessels in the center of the rivers. It will also prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes the safe passage of another vessel to any launching ramp, marine, or fleeting area unless authorized.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0118 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 ENS William Russell, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412-221-0807, email William.W.Russell@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
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

During a Passenger Vessel Association Rivers Region Meeting in November of 2016, participants notified Coast Guard Marine Safety Unit (MSU) Pittsburgh of navigation and safety issues involving vessel congestion near the Point of Pittsburgh during the summer months. As a result, MSU Pittsburgh formed a Congested Waterways Committee that meets monthly to investigate the congestion issue and discuss concerns regarding use of the waterway. The committee includes: tow boat operators, commercial passenger vessel operators, port executives, safe boating council members, industry representatives, and members from local recreational boat associations, along with representatives of the Coast Guard Auxiliary, United States Army Corps of Engineers (USACE), and city and state law enforcement officials.

MSU Pittsburgh learned that during summer months, especially on weekends, large numbers of recreational vessels anchor or drift in the vicinity of the Point of Pittsburgh, which created an unsafe navigation situation for the larger commercial vessels utilizing the waterway. Some of the participants discussed several near misses between commercial and recreational vessels, but currently there is no standard definition of a near miss as it pertains to this issue, nor has it been tracked. MSU Pittsburgh received comments about the dangers of recreational vessels anchoring or drifting near the sailing line,¹ and conversely, about the dangers of commercial vessels that seem to expect vessels to give way as a matter of course. The local ferries also expressed concerns regarding vessels blocking the approaches to their loading areas.

During the summer of 2018, MSU Pittsburgh was notified of two outdoor concerts at Heinz Field. Due to the proximity of the stadium to the Ohio River, large concentrations of recreational vessels were anticipated throughout concert weekends. To mitigate the navigational impact, MSU Pittsburgh permitted these concerts as marine events and established temporary Special Local Regulations to maintain a safe and clear navigation area during the concert weekends.

Both temporary Special Local Regulations prohibited persons and vessels from loitering, anchoring, stopping, or drifting more than 100 feet from any riverbank or act in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. In advance of the concert weekends, MSU Pittsburgh conducted outreach/education. MSU Pittsburgh provided flyers to the three locks and dams of the Pitt Pool to be given to boaters entering the pool throughout the concert weekends. Coast

¹ The phrase “sailing line” is defined as the middle of the river as marked on the USACE river charts.

Guard and Coast Guard Auxiliary patrols also provided flyers to boaters in the Pitt Pool during the concerts. MSU Pittsburgh personnel participated in news media interviews with two local TV stations and one local newspaper. According to the USACE, 529 recreational and 133 commercial vessels transited through the locks of the Pitt Pool throughout the concert weekends. Additionally, 316 passenger vessel trips were conducted in close proximity to Heinz Field. Despite the concentration of vessels, both recreational and commercial vessels were able to transit safely throughout the weekend, and positive feedback was received from industry, other government agencies, and recreational representatives.

On July 1, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Regulated Navigation Area; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh, PA” (84 FR 31273). The rulemaking proposed establishing a Regulated Navigation Area that would prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting more than 100 feet from any river bank in the regulated navigation area unless authorized in order to reduce vessel congestion and provide for safe passage of transiting vessels in the center of the rivers. It also proposed to prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes the safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized. There we invited comments on our proposed regulatory action related to this Regulated Navigation Area. During the comment period that ended July 31, 2019, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231). The purpose of this rulemaking is to ensure the safety of persons, vessels, and the marine environment on the navigable waters of the Monongahela, Allegheny, and Ohio Rivers at Pittsburgh, Pennsylvania due to high vessel traffic volume. The Commander of the Eighth Coast Guard District has determined that potential hazards associated with the risk of collision in this area is a safety concern for any vessel loitering, anchoring, stopping, or drifting more than 100 feet from a riverbank or in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published July 1, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

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, and impact of the regulated navigation area. The regulated navigation area uses minimally intrusive guidelines for vessel operation designed to improve the safety of navigation on the waters of the area. This regulated navigation area does not meet any of the criteria for a significant regulatory action under Executive Order 12866.

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 received 0 comments from the Small Business Administration on this rulemaking. 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.

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 regulated navigation area that prohibits loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area. It is categorically excluded from further review under paragraph L60(a) 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 (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: 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 § 165.823 to read as follows:

§ 165.823 Allegheny River, Monongahela River, and Ohio River, Pittsburgh, Pennsylvania; Regulated Navigation Area.

- (a) *Location.* The following is a regulated navigation area (RNA): The waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8 on the Allegheny River, Fort Pitt Highway Bridge at MM 0.22 on the Monongahela River, and West End-North Side Highway Bridge at MM 0.8 on the Ohio River.

(b) *Applicability.* This section applies to any vessel operating within the RNA, including a naval or public vessel, except a vessel engaged in:

- (1) Law enforcement;
- (2) Servicing aids to navigation; or
- (3) Surveying, maintaining, or improving waters within the RNA.

(c) *Regulations.* (1) No vessel shall loiter, anchor, stop, moor, remain or drift at any time more than 100 feet from any river bank within the RNA without permission of the Captain of the Port (COTP), or any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(2) No vessel shall loiter, anchor, stop, moor, remain or drift in any manner as to impede safe passage of another vessel to any launching ramp, marina, or fleeting area.

Dated: January 3, 2020.

John P. Nadeau,
Rear Admiral, U.S. Coast Guard,
Commander, Eighth Coast Guard District.

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