



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0126]

RIN 1625-AA00

Safety Zone; Pittsburgh, PA; Ice Accumulations; Allegheny River Mile 1.0-72.0

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Allegheny River within the Captain of the Port Pittsburgh Zone, which includes mile 1.0 to mile 72.0 on the Allegheny River. This safety zone is needed to protect persons, property, and vessels transiting the area from the hazards associated with ice accumulations on the waterways. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Pittsburgh or a designated representative.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through April 1, 2015,

and enforceable through actual notice beginning on February 26, 2015, until April 1, 2015 or ice conditions within the COTP Pittsburgh Zone have improved, whichever occurs earlier.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2015-0126. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone (412) 221-0807, e-mail Jennifer.L.Haggins@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366-9826

SUPPLEMENTARY INFORMATION:

Table of Acronyms

BNM	Broadcast Notices to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final 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 using the Notice of Proposed Rulemaking (NPRM) Process. The Coast Guard, with recommendations from the Pittsburgh Ice Committee (comprised of Army Corps of Engineers - Pittsburgh District, National Weather Service, Marine Safety Unit Pittsburgh, and Chairperson of the Waterways Navigation Committee), has established a safety zone on all waters of the Allegheny Rivers within the COTP Pittsburgh Zone. This safety zone will remain in effect February 26, 2015, until April 1, 2015 or ice conditions within the COTP Pittsburgh

Zone have improved, whichever occurs earlier. This safety zone is the result of significant ice formation within the navigable channels of the Allegheny River, due to extended periods of sub-freezing temperatures. Waterway users will be informed of the decisions by the Pittsburgh Ice Committee during the Industry Teleconference that is hosted by MSU Pittsburgh. This emergent situation does not allow time for the NPRM Process. After full review of information provided by the Pittsburgh Ice Committee, Army Corps of Engineers - Pittsburgh District, and National Weather Service, the Coast Guard has determined that immediate action establishing additional safety measures is necessary to ensure public safety during the next several weeks. Delaying the implementation of this rule by completing the NPRM Process is contrary to public interest. Immediate action is needed to protect persons, property, and vessels transiting into, out of, or within the COTP Pittsburgh Zone during sub-freezing temperatures and resulting ice accumulations.

For the same reasons discussed above, 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. Providing 30 days notice would unnecessarily delay the effective date and

would be impracticable and contrary to public interest because immediate action is needed to protect persons, property, and vessels transiting into, out of, or within the COTP Pittsburgh Zone.

#### B. Basis and Purpose

The COTP Pittsburgh Zone has recently experienced consecutive weeks of sub-freezing temperatures. Accumulations of ice have formed on the Allegheny River resulting in vessels not being able to transit the river.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

#### C. Discussion of Final Rule

The Coast Guard is establishing a safety zone for all waters of the Allegheny Rivers within the COTP Pittsburgh Zone, which includes mile 1.0 to mile 72.0 on the Allegheny River. Entry into this zone is prohibited to all vessels and persons, except persons and vessels specifically authorized by the COTP Pittsburgh. This rule is effective immediately and will be enforced February 26, 2015, until

April 1, 2015 or ice conditions within the COTP Pittsburgh Zone have improved, whichever occurs earlier. As stated in the Basis and Purpose section above, on the recommendation from the Pittsburgh Ice Committee, entry into this zone is prohibited to all vessels and persons, except persons and vessels specifically authorized by the COTP Pittsburgh.

The COTP Pittsburgh will inform the public through Broadcast Notices to Mariners (BNM) of details regarding enforcement and any changes to this safety zone during ice accumulation conditions.

#### D. 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 or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule will be in effect during emergency conditions involving ice accumulation on the Allegheny River. While some impacts on routine navigation will be recognized by waterway users, the recommendation for this emergency safety measure came from the Pittsburgh Ice Committee which is comprised of Army Corps of Engineers - Pittsburgh District, National Weather Service, Marine Safety Unit Pittsburgh, and Chairperson of the Waterways Navigation Committee. The Coast Guard will continue to make notifications to the marine community and local industry contacts that could be operating in the area during these conditions. Additionally, deviation from the rule may be requested and will be considered on a case-by-case basis by the COTP or a designated representative.

## 2. 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.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit mile 1.0 to mile 72.0 on the Allegheny River, from February 26, 2015, until April 1, 2015 or ice conditions within the COTP Pittsburgh Zone have improved, whichever occurs earlier. This emergency safety zone will not have a significant economic impact on a substantial number of small entities due to its limited scope and short duration.

Entry into this zone is prohibited to all vessels and persons, except persons and vessels specifically authorized by the COTP Pittsburgh. The Coast Guard will ensure that that the local marine community is aware of the safety zone through BNMs and other notification. Additionally, deviation from the rule may be requested and will be considered on a case-by-case basis by the COTP or a designated representative.

### 3. Assistance for Small Entities

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, above.

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.

#### 4. 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).

#### 5. Federalism

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 determined that this rule does not have implications for federalism.

#### 6. 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.

#### 7. 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.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

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.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 establishes an emergency safety zone for waters of the Allegheny River within the COTP Pittsburgh Zone. This rule is categorically excluded from further review under paragraph 34(g) of figure 2-1 of the Commandant Instruction an environmental analysis checklist supporting this

determination and a Categorical Exclusion Determination are 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 rule.

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 § 165.T08-0126 to read as follows:

§ 165.T08-0126 Safety Zone; Pittsburgh, PA; Ice Accumulations; Allegheny River Mile 1.0-72.0.

(a) Location. The following area is a safety zone: all waters of the Allegheny River within the Captain of the Port (COTP) Pittsburgh Zone, mile 1.0 to mile 72.0 on the Allegheny River.

(b) Effective date. This temporary rule is effective from [INSERT DATE OF PUBLICAITON IN THE FEDERAL REGISTER] through April 1, 2015, and enforceable February 26, 2015, until April 1, 2015 or ice conditions within the Captain of the Port (COTP) Pittsburgh Zone have improved, whichever occurs earlier.

(c) Regulations. (1) In accordance with the general regulations in §165.23, entry into this zone is prohibited unless authorized by the COTP Pittsburgh or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP Pittsburgh or a designated representative. The COTP Pittsburgh or a representative may be contacted at (412) 221-0807.

(3) All persons and vessels shall comply with the instructions of the COTP Pittsburgh or their designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) Informational broadcasts. The COTP Pittsburgh will inform the public through Broadcast Notices to Mariners (BNM) of the safety zone and any changes to the enforcement periods.

Dated: February 26, 2015.

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L. N. Weaver,  
Commander, U.S. Coast Guard,  
Captain of the Port Pittsburgh.

***[FR Doc. 2015-06356 Filed: 3/19/2015 08:45 am; Publication Date: 3/20/2015]***