



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0614]

RIN 1625-AA00

Safety Zone; Fireworks Display; Ohio River Mile 469.6 to 470.2, Newport, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River, surface to bottom, from mile 469.6 to 470.2. This action is necessary to provide for the safety of life on these navigable waters near Newport, KY, during the City of Newport Fireworks Display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective from 10:00 p.m. to 11:00 p.m. on July 3, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0614 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 about this rulemaking, call or email Petty Officer Caloeb Gandy, Sector Ohio Valley, U.S. Coast Guard; telephone 502-779-5334, email Caloeb.l.gandy@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

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 the event sponsor submitted the event application on June 22, 2016. This late submission did not give the Coast Guard enough time to complete the full NPRM process. This action is necessary to ensure the safety of the life and property during the fireworks display on or over this navigable waterway. It is impracticable to publish an NPRM because we must establish this safety zone by July 3, 2016.

We are issuing this rule, and 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 this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during the event and immediate action is necessary to prevent possible loss of life and property.

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 Ohio Valley (COTP) has determined that potential hazards associated with the fireworks display on July 3, 2016 will be a safety concern for all waters of the Ohio River, surface to bottom, from mile 469.6 to 470.2. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary safety zone before, during, and after the City of Newport Fireworks Display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on July 3, 2016. The temporary safety zone will cover all waters of the Ohio River, surface to bottom, from mile 469.6 to 470.2. Transit into and through this area is prohibited from 10:00 p.m. to 11:00 p.m. on July 3, 2016. The duration of the temporary safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks displays. No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the COTP or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7475 or can be reached by VHF-FM channel 16. Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast notice to Mariners.

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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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.

This regulatory action determination is based on the size, location, duration, and time-of-year of the temporary safety zone. The temporary safety zone will only be in effect for 60 minutes, during late evening hours and covers an area of the waterway stretching less than one mile. The Coast Guard expects minimum adverse impact to mariners from the temporary safety zone activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP Ohio Valley or a designated representative to transit the temporary safety 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 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 \$165,000,000 (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.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 temporary safety zone lasting less than two hours that will prohibit entry on all waters of the Ohio River, surface to bottom, extending 500 feet from the Kentucky shoreline, from mile 469.6 to 470.2. It 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.

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 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.T08-0614 to read as follows:

§ 165.T08-0614 Safety Zone; Ohio River Between Mile 469.6 and 470.2, Newport, KY.

(a) Location. The following area is a temporary safety zone for all waters, surface to bottom, of the Ohio River between mile 469.6 and mile 470.2, Newport, KY.

(b) Enforcement period. This temporary safety zone will be enforced from 10:00 p.m. to 11:00 p.m. on July 3, 2016. Actual notice will be used for enforcement purposes.

(c) Regulations. (1) In accordance with the general regulations in §165.23, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley (COTP) or designated personnel. 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 deviate from this safety zone regulation and enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(d) Informational broadcasts. The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

R. V. Timme,
Captain, U.S. Coast Guard,
Captain of the Port Ohio Valley.
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