



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-1113]

RIN 1625-AA00

Safety zone; Tennessee River, Mile 446.0 to 454.5

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish a safety zone for all waters of the Tennessee River, beginning at mile marker 446.0 and ending at mile marker 454.5 during periods of high water flow. High water flow is determined by flow rates that have reached or exceeded 100,000 cubic feet per second at Chickamauga lock and dam on the Tennessee River at mile marker 471.0. This proposed safety zone is necessary to provide safety for mariners transiting on the Tennessee River during periods of high water flow. Entry into this area will be prohibited unless specifically authorized by the Captain of the Port Ohio Valley or designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2015-1113 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public

Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Ashley Schad, MSD Nashville, Nashville, TN, at 615-736-5421 or at Ashley.M.Schad@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The Captain of the Port Ohio Valley is proposing to establish a safety zone for all waters of the Tennessee River, from mile 446.0 to 454.5 during periods of high water flow. This proposed safety zone is necessary to provide safety for mariners transiting on the Tennessee River during periods of high water flow. There have been temporary final rules issued in the past establishing a safety zone on the Tennessee River beginning at mile marker 446.0 and ending at mile marker 454.5 when flow rates reached or exceeded 100,000 cubic feet per second at Chickamauga lock and dam. Examples of these previous temporary final rules were published under docket numbers USCG-2013-0025 and USCG-2011-1148. This proposed rulemaking is also necessary to more efficiently effect necessary safety measures during emergent high water events in the future by reducing administrative burden and the amount of paperwork required for multiple individual rulemakings. The Tennessee River beginning at mile marker 446.0 and

ending at 454.5 poses a navigational hazard during periods of high water flow. A high water flow determination for this area is established when flow rates reach or exceed 100,000 cubic feet per second at Chickamauga lock and dam on the Tennessee River at mile marker 471.0. The Captain of the Port Ohio Valley has determined that additional safety measures are necessary to protect all mariners during periods of high water flow. Therefore, the Coast Guard proposes to establish a permanent safety zone on specified waters of the Tennessee River triggered by high water flow. This proposed regulation would be in effect whenever flow rates reach or exceed 100,000 cubic feet per second at Chickamauga lock and dam on the Tennessee River at mile marker 471.0.

The Coast Guard proposes this rulemaking under the authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The Captain of the Port Ohio Valley is proposing to establish a safety zone for all waters of the Tennessee River beginning at mile marker 446.0 and ending at mile marker 454.5. Vessels or persons would not be able to enter into, depart from, or move within this area without permission from the Captain of the Port Ohio Valley or designated representative. Persons or vessels requiring entry into or passage through the proposed safety zone will be required to request permission from the Captain of the Port Ohio Valley, or designated representative. They can be contacted on VHF-FM Channel 13, 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465. This proposed rule would be effective during periods of high water flow when flow rates reach or exceed 100,000 cubic feet per second at Chickamauga lock and dam. The Captain of the Port Ohio Valley would inform the public through broadcast notices to mariners during periods of high water flow when the safety zone is established as well as when flow rates fall below 100,000 cubic feet per second and the safety zone is no longer in effect.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the NPRM 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-day of the safety zone. Vessel traffic would only be impacted during times of high water which pose dangerous navigational hazards when flow rates exceed 100,000 cubic feet per second at Chickamauga lock and dam. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow 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 proposed rule would 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 IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would 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 E.O. 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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a safety zone lasting only during periods of high water flow measured by Chickamauga lock and dam. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and 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 proposed rule.

#### 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.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **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 proposes to amend 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 § 165.844 to read as follows:

**§ 165.844 Safety Zone; Tennessee River, Mile 446.0 to 454.5; Chattanooga, TN**

(a) **Location.** All waters of the Tennessee River beginning at mile marker 446.0 and ending at mile marker 454.5 at Chattanooga, TN.

(b) **Effective date.** This rule is effective during periods of high water flow when flow

rates reach or exceed 100,000 cubic feet per second at Chickamauga lock and dam on the Tennessee River at mile marker 471.0.

(c) Periods of Enforcement. This rule will be enforced whenever flow rates reach or exceed 100,000 cubic feet per second at Chickamauga lock and dam on the Tennessee River at mile marker 471.0. The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the safety zone.

(d) Regulations.

(1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels desiring entry into or passage through the zone must request permission from the Captain of the Port Ohio Valley 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) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: January 10, 2017.

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M. B. Zamperini  
Captain, U. S. Coast Guard  
Captain of the Port Ohio Valley  
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