



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0336]

RIN 1625-AA00

Safety Zone; Tennessee River 323.0-325.0, Huntsville, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for all navigable waters of the Tennessee River beginning at mile marker 323.0 and ending at mile marker 325.0 beginning at noon on May 15, 2017 through noon on May 22, 2017. This safety zone is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with a cargo transfer operation taking place at the Redstone Arsenal. This rule prohibits persons and vessels from entering the safety zone area unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through noon on May 22, 2017. For purposes of enforcement, actual notice will be used from noon on May 15, 2017, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0336 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 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
COTP	Captain of the Port Ohio Valley
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

On April 18, 2017, Redstone Arsenal notified the Coast Guard of cargo transfer operations that would take place from May 15, 2017 to May 22, 2017 during the movement of hazardous cargo. The cargo transfer operations will take place at various times determined by environmental factors. The Captain of the Port Ohio Valley (COTP) has determined that this safety zone is necessary to protect persons, property, and infrastructure before, during, and after the cargo transfer operations.

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 Coast Guard was informed of this project in early April, but full details of the operation on or over the navigable waterway were not provided until April 18, 2017. The notification of operations was made only a few weeks before the project was scheduled to begin. Immediate action is needed to respond to potential safety hazards related to this cargo transfer operation on or over this navigable waterway. We must establish this safety zone by May 15, 2017. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 the effective date of this rule would be contrary to public interest because immediate action is needed to establish a safety zone to protect persons, property, and infrastructure whenever cargo transfer operations take place at Redstone Arsenal from May 15, 2017 until May 22, 2017.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined the need to protect persons, property, and infrastructure during the cargo transfer operations taking place at the Redstone Arsenal on the Tennessee River at mile marker 323.0 to mile marker 325.0. This rule is needed to protect personnel, vessels, and these navigable waters before, during, and after cargo transfer operations take place.

IV. Discussion of the Rule

The Captain of the Port Ohio Valley is establishing this safety zone from May 15, 2017 through May 22, 2017 for all navigable waters of the Tennessee River beginning at mile marker 323.0 and ending at mile marker 325.0. The Coast Guard was informed that the operations would take place during daylight hours. All vessels intending to transit the Tennessee River between mile markers 323.0 and 325.0 from May 15, 2017 to May 22, 2017 must contact COTP or a designated representative to request permission to transit at a time when critical operations are not taking place. If transit permission is granted, the Tennessee River between mile markers 323.0 and 325.0 will be a no wake zone. Safety zone enforcement times will be announced via Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), Securities, or through other public notice. Any deviation from this rule is prohibited unless specifically authorized by the COTP or a designated representative. The COTP may be contacted by telephone at 1-800-253-7465 or can be reached by VHF-FM channel 16.

The safety zone is intended to protect persons, property, and infrastructure from safety hazards associated with cargo transfer operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are establishing appears at the end of this document.

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-day of the safety zone.

This safety zone prohibits transit on the Tennessee River from mile 323.0 to mile 325.0, prior to, during, and 30 minutes after any vessel movement and cargo transfer operations from May 15, 2017 through May 22, 2017. BNMs, LNMs and other forms of public notice will also inform the community of the safety zone enforcement so that they may plan accordingly for each enforcement period restricting transit. Vessel traffic must request permission from the COTP or a designated representative to enter the restricted area.

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 area may be small entities, for the reasons stated in section V.A above this rule would 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 \$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 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 area safety zone that would prohibit entry to unauthorized vessels. 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 Record of Environmental Consideration 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 U. S. 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. Temporary § 165.T08-0336 is added to read as follows:

§ 165.T08-0336 Safety Zone; Tennessee River Miles 323.0 to 325.0, Huntsville, AL.

(a) Location. All navigable waters of the Tennessee River beginning at mile

marker 323.0 and ending at mile marker 325.0 in Huntsville, AL.

(b) Effective date. This rule is effective from noon on May 15, 2017 through noon on May 22, 2017.

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

(2) Persons or vessels requiring entry into or passage through the area must request permission from the COTP 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.

Dated: May 12, 2017.

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

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