



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0700]

RIN 1625-AA87

Security Zone; Ohio River, Olmsted, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the navigable waters within a half mile radius of Olmsted Lock and Dam located at mile marker 964.5 on the Ohio River. The security zone is needed to protect dignitaries, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during a dignitary visit. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 6 a.m. through 5 p.m. on August 30, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0700 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 Chief Petty Officer, Gary Heflin, Marine Safety Unit Paducah Waterways

Management, U.S. Coast Guard; telephone 270-442-1621, email MSUPaducah-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Ohio Valley
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. It is impracticable because we must establish this security zone by August 30, 2018 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The Coast Guard received minimal notice regarding the dignitary visit, which is customary for security purposes. The Coast Guard has determined that the security zone is needed to protect the visiting dignitaries, persons, and property. Providing notice would be contrary to the public interest as it would delay establishment of the security

zone until after the dignitary visit and jeopardize the safety of the dignitaries, vessels, and waterfront facilities.

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* because it is contrary to the public interest. Immediate action is needed to provide waterside security and protection for the dignitary visit.

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 Sector Ohio Valley (COTP) has determined that potential hazards associated with a dignitary visit on August 30, 2018, will be a security concern for the dignitaries, vessels, and waterfront facilities on the Ohio River near the Olmsted Lock and Dam. This rule is needed to protect the dignitaries, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during the dignitary visit.

IV. Discussion of the Rule

This rule establishes a temporary security zone from 6 a.m. through 5 p.m. on August 30, 2018. The security zone will cover all navigable waters within a half mile of Olmsted Lock and Dam, located at mile marker 964.5 on the Ohio River in Olmsted, IL. The duration of the security zone is intended to cover the period of the dignitary visit. Entry of vessels or persons into this zone is prohibited unless granted permission by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley. They may be contacted on VHF-FM Channel 13

or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". All persons and vessels shall comply with the instructions of the COTP and a designated on-scene U.S. Coast Guard representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement period for the temporary security zone as well as any changes in the dates and times of enforcement.

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 13563 ("Improving Regulation and Regulatory Review") and 12866 ("Regulatory Planning and Review") 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs") directs agencies to reduce regulation and control regulatory costs and provides that "for every one new

regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action,” under section 3(f) of Executive Order 12866.

Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

This regulatory action determination is based on the size, location, and duration of the security zone. The security zone impacts a half mile radius around the Olmsted Lock and Dam for eleven hours on one afternoon. The Coast Guard will also issue Broadcast Notices to Mariners via VHF-FM marine channel 16 about the zone and the rule allows 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 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 temporary security 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 \$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 Commandant Instruction M16475.1D, 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 security zone lasting eleven hours that will prohibit entry within a half mile radius of the Olmsted Lock and Dam, located at mile marker 964.5 on the Ohio River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. 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 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.T08-0700 to read as follows:

§ 165.T08-0700 Security Zone; Ohio River, Olmsted, IL.

(a) Location. The following area is a security zone: all navigable waters within a half mile of Olmsted Lock and Dam, located at MM 964.5 on the Ohio River, Olmstead, IL.

(b) Effective period. This section is effective from 6 a.m. through 5 p.m. on August 30, 2018.

(c) Regulations. (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(2) To seek permission to enter, contact the COTP or the COTP's designated representative via VHF-FM Channel 16 or 502-779-5422.

(3) Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement period for the temporary security zone as well as any changes in the dates and times of enforcement.

Dated: August 17, 2018.

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