



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0057]**

**RIN 1625-AA00**

**Safety Zone; Monongahela River Mile 28.0 to Mile 30.0, Pittsburgh, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for mile 28.0 to mile 30.0 of the Monongahela River. This action is necessary to provide for the safety of life on these navigable waters near Mitchell Power Plant, Pittsburgh, PA, during an electrical conductor pull from March 2, 2020 through March 20, 2020. This rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Pittsburgh or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 20, 2020. For the purposes of enforcement, actual notice will be used from March 2, 2020 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0057 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 MST2 Trevor Vannatta, Waterways Management U.S. Coast Guard; telephone 412-221-0807, email Trevor.J.Vannata@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On November 12, 2019, the Duquesne Light Company notified the Coast Guard that it will be conducting an electrical conductor pull on March 2, 2020, in order to replace an existing electrical conductor with a new higher ampacity electrical conductor. In response, on February 3, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Monongahela River Mile 28.0 to Mile 30.0, Pittsburgh, PA”, (85 FR 5911, Feb. 3, 2020). That NPRM comment period does not close until March 4, 2020. The Coast Guard is unable to delay implementing this final rule to await the close of the comment period because the start date of the electrical conductor pull is March 2, 2020.

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 immediate action is needed to mitigate potential safety hazards associated with the process of pulling the new cables across the Monongahela River. It is impracticable to publish an NPRM and consider the comments before issuing this final rule because we must establish this safety zone by March 2, 2020, when the electrical pulling is scheduled to start.

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**. Delaying the effective date of this rule would be impracticable because immediate action is needed to protect vessels and persons during the replacement of old powerlines crossing the Monongahela River beginning on March 2, 2020.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Pittsburgh (COTP) has determined that potential hazards associated with the replacement of powerlines between March 2, 2020 through March 20, 2020 will be a safety concern for anyone between Mile 28.0 – 30.0 on the Monongahela River. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled work.

### **IV. Discussion of Comments, Changes, and the Rule**

This rule establishes a safety zone from March 2, 2020 through March 20, 2020. The safety zone will cover all navigable waters from mile 28.0 to mile 30.0 on the Monongahela River near Pittsburgh, PA. The duration of the zone is intended to ensure

the safety of vessels and these navigable waters before, during, and after a scheduled maintenance activity. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone will impact a 2-mile stretch of the Monongahela River for 19 days, and vessel traffic would be able to safely transit around this safety zone. 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 received 0 comments from the Small Business Administration on this rulemaking. 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 IV.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 call or email 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.

*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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 safety zone lasting from March 2, 2020 through March 20, 2020 from mile 28.0 to mile 30.0 on the Monongahela River near Pittsburgh, PA. 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. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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:** 46 U.S.C. 70034, 70051; 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.T08-0057 to read as follows:

### **§ 165.T08-0057\_Safety Zone; Monongahela, Mile 28.0 to Mile 30.0, Pittsburgh, PA.**

(a) Location. The following area is a safety zone: all navigable waters of the Monongahela River from mile 28.0 to mile 30.0.

(b) Effective period. This section is effective from March 2, 2020 through March 20, 2020.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

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

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

(d) Information broadcasts. The Captain COTP or a designated representative will inform the public through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: February 27, 2020.

A.W. DEMO,

Commander, U.S. Coast Guard

Captain of the Port Marine Safety Unit Pittsburgh.

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