



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0359]

RIN 1625-AA00

Safety Zone; Tennessee River, Muscle Shoals, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Tennessee River from Mile Marker (MM) 407 to MM 409, on July 13, 2020 in conjunction with the operations being conducted at the TVA Widows Creek Fossil Plant. This safety zone is needed to protect the public, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature from the hazards associated with demolition operations at the TVA Widows Creek Fossil Plant. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 7 a.m. through noon on July 13, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0359 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 Second Class Paul Sanders, Marine Safety Detachment Nashville U.S. Coast Guard; telephone 615-736-5421, email Paul.M.Sanders@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 there is a vital need to ensure the closure of the river due to the hazards associated with the explosive operations at the TVA Widows Creek Fossil Plant. A safety zone on the Tennessee River from MM 407 to MM 409 is necessary to provide appropriate protection to the public during the explosive operations. It is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before the temporary safety zone needs to be established by July 13, 2020.

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**. The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is a vital need to ensure the closure of the river due to the hazards associated with the explosive operations at the TVA Widows Creek Fossil Plant. A safety zone on the Tennessee River from MM 407 to MM 409 is necessary to provide appropriate protection to the public during the explosive operations. It is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before the temporary safety zone needs to be established by July 13, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the demolition operations at the TVA Widows Creek Fossil Plant on July 13, 2020, will be a safety concern for anyone within the 2 mile segment of river. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the demolition operations.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. until noon on July 13, 2020. The safety zone will cover all navigable waters of Tennessee River from MM 407 to MM 409. The duration of the zone is intended to protect personnel, vessels, and the marine

environment in these navigable waters before, during, and after the demolition operations. No vessel or person will 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, duration, and time-of-day of the regulated area. This rule is limited to the Tennessee River from MM 407 to MM 409 on July 13, 2020, and will be enforced only during the times specified. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulated area and the rule allows vessels to seek permission to enter the 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 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 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 only 5 hours for a two mile segment of the Tennessee 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. 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.T08-0359 to read as follows:

§ 165.T08-0359 Safety Zone; Tennessee River, Muscle Shoals, AL.

(a) *Location.* The following area is a safety zone: The entire width of the Tennessee River from mile marker (MM) 407 to MM 409.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-FM radio channel 16 or phone at 1-800-253-7465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from 7 a.m. to noon on July 13, 2020.

Dated: June 30, 2020

A. M. Beach,
Captain, U.S. Coast Guard,
Captain of the Port Sector Ohio Valley.

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