



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0542]

RIN 1625-AA00

Safety Zone; Cumberland River; Canton, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Cumberland River extending from mile marker (MM) 61 to MM 64 near Canton, KY. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards due to the salvage of a cruise ship and the disembarkation of the passengers on board. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through July 16, 2021. For the purposes of enforcement, actual notice will be used from July 9, 2021 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-2021-0542 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email MST2, Dylan Caikowski, MSU Paducah, U.S. Coast Guard; telephone 270-442-1621 ext. 2120, email STL-SMB-MSUPaducah-WWM@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 it would be impracticable. On July 7, 2021 a cruise ship grounded near MM 62 of the Cumberland River causing a hazardous condition for the disembarkation of the passengers on board. Due to the nature of the Cumberland River and the amount of recreational vessels there is potential risk during salvage of the cruise ship to recreational vessels in the area. The safety zone must be established immediately to protect people, vessels, and the marine environment from hazards associated with the salvage of a cruise ship and the disembarkation of the passengers on board. It is impracticable to publish an NPRM because we must establish this safety zone by July 9, 2021.

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 respond to the potential safety hazards associated with the salvage of a cruise ship and the disembarkation of the passengers on board.

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 COTP has determined that potential hazards associated with the salvage and disembarkation of passengers from a grounded cruise ship will be a safety concern for anyone between MM 61 and MM 64 on the Cumberland River. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards due to the salvage of a cruise ship and the disembarkation of the passengers on board at MM 62 on the Cumberland River.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from July 9, 2021 through July 16, 2021, or until the hazard have been mitigated. The temporary safety zone will cover all navigable waters of the Cumberland River from MM 61 to MM 64. The COTP will terminate the enforcement of this temporary safety zone before July 16, 2021 if the hazards associated with the salvage of a cruise ship and the disembarkation of the passengers on board have been resolved. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Requests for entry will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 502-779-5422 or the on scene designated representative can be reached via VHF-FM channel 16. Persons and vessels permitted to enter this temporary safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the 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. 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).

This regulatory action determination is based on the size, location, and duration. This temporary safety zone will restrict vessel traffic from entering or transiting within a 3 mile area of navigable waters on the Cumberland River between MM 61 and MM 64. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM channel 16 about the temporary safety 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 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 temporary safety zone lasting seven days or until the salvage of a cruise ship, and disembarkation of the passengers on board is complete. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

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.T08-0542 to read as follows:

§ 165.T08-0542 Safety Zone; Cumberland River, Canton, KY.

(a) *Location.* The safety zone will cover all navigable waters of the Cumberland River from mile marker (MM) 61 to MM 64.

(b) *Enforcement period.* This section will be enforced from July 9, 2021 and will continue through July 16, 2021 or until the hazards associated with the salvage of a cruise ship and the disembarkation of the passengers on board have been mitigated, whichever occurs first.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23 of this part, entry of vessels or persons into the zone during demolition operations is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or 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.

(2) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

Dated: July 9, 2021.

A. M. Beach,

CAPTAIN, U.S. Coast Guard,

Captain of the Port Sector Ohio Valley.

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