

Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 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 or more in any one year. Though this rule will not result in such expenditure, we discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order because

it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

#### § 165.822 [Removed]

■ 2. Remove § 165.822.

Dated: June 30, 2004.

**W.W. Briggs,**

*Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh.*

[FR Doc. 04–16649 Filed 7–21–04; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Memphis 04–001]

RIN 1625–AA00

#### Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all the waters of the Lower Mississippi River from mile 778.0 and to mile 781.0, extending the entire width of the channel. This safety zone is needed to protect construction personnel, equipment, and vessels involved in the construction of ten bendway weir sites. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative.

**DATES:** This rule is effective from 6 a.m. on August 1, 2004, until 6 p.m. on September 30, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket (COTP Memphis-04–001) and are available for inspection or copying at Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, Tennessee, 38103–2300 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer (CPO) James Dixon, Marine Safety Office Memphis at (901) 544–3941, extension 2116.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

On April 23, 2004, we published a notice of proposed rulemaking (NPRM) entitled “Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR” in the **Federal Register** (69 FR 21981). We received no comments on the proposed rule. No public hearing was requested, and none was held.

##### Background and Purpose

On February 26, 2004, the Army Corps of Engineers requested a channel closure for the Lower Mississippi River from mile 778.0 to 781.0, to occur daily from 6 a.m. until 6 p.m. beginning on August 1, 2004, and ending on September 30, 2004. The effective dates for this rule are based upon the best

available information and may change. This closure is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with vessels transiting in the vicinity of ten, bendway weir construction sites. These ten bendway weir sites are located on the left descending bank, in the vicinity of Driver Bar between mile 778.0 and 781.0, Lower Mississippi River. Construction of the bendway weirs is needed to maintain the integrity of the left descending bank of the Mississippi River at the project site and can only be performed under optimal conditions. During working hours, construction equipment will be located in the navigable channel creating a hazard to navigation. A safety zone is needed to protect construction personnel, equipment, and vessels involved in the construction of ten bendway weir sites. During non-working hours, the construction equipment will be moved out of the channel, allowing vessels unrestricted passage through the safety zone.

#### **Discussion of Rule**

The Captain of the Port Memphis is establishing a temporary safety zone for all the waters of the Lower Mississippi River from mile 778.0 and to mile 781.0. Entry into this zone by vessels other than those contracted by the U.S. Army Corps of Engineers and operating in support of the bendway weir construction project, is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative. This regulation is effective from 6 a.m. on August 1, 2004, until 6 p.m. on September 30, 2004. This rule will only be enforced from 6 a.m. until 6 p.m. on each day that it is effective. During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone. The Captain of the Port Memphis may permit vessels to navigate through the safety zone during work hours if conditions allow for safe transit. A broadcast notice to mariners will be issued announcing those times when it is safe to transit.

#### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This rule will only be enforced for 12 hours each day that it is effective. During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone. The Captain of the Port Memphis may permit vessels to transit through the safety zone during work hours if conditions allow for safe transit. A broadcast notice to mariners will be issued announcing those times when it is safe to transit. The impacts on routine navigation are expected to be minimal.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. 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.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the waters of the Lower Mississippi River, Mile Marker 778.0 to 781.0 daily from 6 a.m. on August 1, 2004, until 6 p.m. on September 30, 2004.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 6 a.m. until 6 p.m. on each day that it is effective; (2) during non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative; and (3) the Captain of the Port Memphis

may permit vessels to transit through the safety zone during work hours if conditions allow for safe transit.

If you are a small business entity and are significantly affected by this regulation please contact CPO James Dixon, Marine Safety Office Memphis, TN at (901) 544–3941, extension 2116.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. 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).

#### **Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

#### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### **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 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as

described in the National Environmental Policy Act of 1969 (NEPA).

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under

### ADDRESSES.

### 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08-033 is added to read as follows:

#### § 165.T08-033 Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR.

(a) *Location.* The following area is a safety zone: all waters of Lower Mississippi River from mile 778.0 and to mile 781.0, extending the entire width of the channel.

(b) *Effective date.* This section is effective from 6 a.m. on August 1, 2004 until 6 p.m. on September 30, 2004.

(c) *Periods of enforcement.* This rule will be enforced from 6 a.m. until 6 p.m. on each day that it is effective. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by vessels other than those contracted by the U.S. Army Corps of Engineers and operating in support of the bendway weir construction project is prohibited unless authorized by the Captain of the Port Memphis.

(2) During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative would inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(3) The Captain of the Port Memphis may permit vessels to navigate during work hours if conditions allow for safe transit. A broadcast notice to mariners would be issued announcing those times when it is safe to transit.

(4) Persons or vessels requiring entry into or passage through the zone at times other than those specified in section (d)(2) and (d)(3) of this rule must request permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis may be contacted by telephone at (901) 544-3912, extension 2124. Coast Guard Group Lower Mississippi River may be contacted on VHF-FM Channel 13 or 16.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Memphis and designated representatives. Designated representatives include Coast Guard Group Lower Mississippi River.

Dated: July 8, 2004.

**D.C. Stalfort,**

*Commander, U.S. Coast Guard, Captain of the Port Memphis.*

[FR Doc. 04-16650 Filed 7-21-04; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD09-03-202]

RIN 1625-AA00

#### Safety Zones; Northeast Ohio

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing safety zones for annual fireworks displays located in Northeast Ohio. These regulations are needed to manage vessel traffic in Northeast Ohio during each event to protect life and property.

**DATES:** This rule is effective from July 1, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. (local) and 3:30 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937-0128.