

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, 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T07–1067 to read as follows:

#### § 165.T07–1067 Safety Zone; Sector Key West COTP Zone Post Storm Recovery, Atlantic Ocean, FL.

(a) *Location.* The following area is a safety zone: All waters within 100 yards of all salvage vessels and pollution recovery vessels operating within 1 nautical mile of land in the Captain of the Port (COTP) Key West.

(b) *Definition.* As used in this section, the term “designated representative” includes Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP Key West in the enforcement of the safety zone.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the COTP Key West by telephone at (305) 292–8727, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(d) *Enforcement period.* This rule will be enforced from 8 a.m. on December 1, 2017, through 8 a.m. on February 1, 2018, unless sooner terminated by the COTP Key West.

Dated: December 1, 2017.

**Jeffrey. A. Janszen,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2017–26462 Filed 12–7–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2017–1064]

RIN 1625–AA00

#### Safety Zone; Ohio River, Ironton, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters on the Ohio River from mile marker (MM) 326.5 to MM 327.5. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the demolition of the Ironton-Russell Bridge. 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 December 8, 2017 through December 22, 2017. This rule will be enforced from December 8, 2017 through December 4, 2017, unless the demolition is postponed because of adverse weather, in which case this rule will be enforced from 10 a.m. to 3 p.m. on December 5, 2017, December 11–15, 2017, and December 18–22, 2017.

For the purposes of enforcement, actual notice will be used from December 4, 2017 until December 8, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2017–1064 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 Robert Miller, Marine Safety Unit Huntington, U.S. Coast Guard; telephone 304–733–0198, email [STL-SMB-MSUHuntington-WWM@uscg.mil](mailto:STL-SMB-MSUHuntington-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 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 impracticable.

We must establish this safety zone by December 4, 2017 and lack sufficient time to provide responsible comment period and then consider those comments before issuing the rule.

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 to provide a full 30 days’ notice is contrary to public interest because immediate action is needed to protect persons and vessels from safety hazards associated with the Ironton-Russell Bridge demolition.

## 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 the bridge demolition taking place on or over this section of the navigable waterway will be a safety concern for anyone within the area designated as the safety zone. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the bridge demolition.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone from 10 a.m. on December 4, 2017 through 3 p.m. on December 22, 2017 for all navigable waters of the Ohio River from mile marker (MM) 326.5 to MM 327.5, for the Ironton-Russell Bridge demolition in Ironton, OH. This

rule will be enforced on from 10 a.m. to 3 p.m. on December 4, 2017, unless the demolition is postponed because of adverse weather, in which case this rule will be enforced from 10 a.m. to 3 p.m. on December 5, 2017, December 11–15, 2017, and December 18–22, 2017.

All potential work delay dates are necessary due to inclement weather, river conditions or mechanical issues that could occur preventing the scheduled demolition on December 4, 2017. The waterway users have been briefed on the procedures to be taken in the event of inclement weather or mechanical issues, and are aware that the project dates may be changed. This safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the bridge demolition. 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-year of the safety zone. Vessel traffic will not be able to safely transit through this safety zone, which will impact a small designated area of the Ohio River from MM 326.5 through MM 327.5 for five hours on December 4, 2017, during a time of year when vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice 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 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 (Pub. L. 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 Management 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 a safety zone lasting only five hours that will prohibit entry on one day, with alternate work delay dates, that will prohibit entry within MM 326.5 through MM 327.5 on the Ohio River due to demolition project of the Ironton-Russell Bridge. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. 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.T08–1064 to read as follows:

#### § 165.T08–1064 Safety zone; Ohio River, MM 326.5 through MM 327.5, Ironton, OH.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River from mile marker (MM) 326.5 through MM 327.5.

(b) *Enforcement period.* This rule will be enforced 10 a.m. through 3 p.m. on December 4, 2017, unless the demolition is postponed because of adverse weather, in which case this rule will be enforced from 10 a.m. to 3 p.m. on December 5, 2017, December 11–15, 2017, and December 18–22, 2017.

(c) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Sector Ohio Valley in the enforcement of the safety zone.

(d) *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 a designated representative.

(2) To seek permission to enter, contact the COTP or designated representative via radio on channel 16.

(3) All persons and vessels shall comply with the instruction of the COTP and designated on-scene personnel.

(e) *Information broadcasts.* The COTP or a designated representative will inform the Public through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate of the enforcement period for each safety zone as well as any changes in the planned and published dates and times of enforcement.

Dated: December 4, 2017.

**M.B. Zamperini,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Ohio Valley.*

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**BILLING CODE 9110–04–P**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

**RIN 2900–AP48**

#### Extra-Schedular Evaluations for Individual Disabilities

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its adjudication regulation pertaining to extra-schedular consideration of a service-connected disability in exceptional compensation cases. This rule clarifies that an extra-schedular evaluation is to be applied to an individual service-connected disability when the disability is so exceptional or unusual that it makes application of the regular rating schedule impractical. An extra-schedular evaluation may not be based on the combined effect of more than one service-connected disability. For the reasons set forth in the proposed rule and in this final rule, VA is adopting the proposed rule as final, with two changes, as explained below.

#### DATES:

*Effective Date:* This rule is effective January 8, 2018.

*Applicability Date:* The provisions of this final rule shall apply to all applications for benefits that are received by VA on or after January 8, 2018 or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit (Federal Circuit) on January 8, 2018.

#### FOR FURTHER INFORMATION CONTACT:

Nora Jimison, Policy Analyst, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On April 20, 2016, VA published in the **Federal Register** (81 FR 23228) a proposed rule to amend its regulation at 38 CFR 3.321(b)(1) in order to clarify its long-standing interpretation that the regulation provides an extra-schedular evaluation for a single service-connected disability, and not for the combined effect of two or more service-connected disabilities. Section 501 of title 38, United States Code, provides VA with the authority to interpret its own regulations under its general rulemaking authority. *Menegassi v. Shinseki*, 638 F.3d 1379, 1382 (Fed. Cir. 2011). VA had already proposed to clarify section 3.321(b)(1) as part of a regulation rewrite project in 2013; however, a subsequent decision by the Federal Circuit held that section 3.321(b)(1) required VA to consider the combined effects of two or more service-connected disabilities when determining extra-schedular evaluations. *Johnson v. McDonald*, 762 F.3d 1362, 1365–66 (Fed. Cir. 2014), *rev'g* 26 Vet. App. 237 (2013). This decision conflicts with VA's longstanding interpretation of section 3.321(b)(1), and VA therefore decided to amend the regulation in a separate rulemaking to clarify its interpretation of the regulation.

Interested persons were invited to submit comments to the proposed rule on or before June 20, 2016, and 11 comments were received. Those comments have been organized according to topic in the discussion below.

#### I. Separation of Powers

A commenter stated that VA's rulemaking to overturn *Johnson* is a violation of the constitutional doctrines of separation of powers and due process. We disagree. "A court's prior judicial construction of a statute trumps an agency construction . . . if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion." *National Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982 (2005). The Federal Circuit, however, held in *Johnson* that the language of prior 38 CFR 3.321(b)(1), not a statute, was "unambiguous" and "consistent with language of [38 U.S.C.] § 1155 authorizing the regulation." 762 F.3d at 1365–66. Where a court decision is based on interpretation of an agency regulation, the agency may undertake rulemaking to revise the regulation to change or clarify the intended meaning of the regulation. *See National Org.*