

the human environment. This proposed rule involves a safety zone from mile 23.8 to mile 26.0 on the Monongahela River near Pittsburgh, PA from March 23, 2020 through April 6, 2020. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### 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.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that

website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### 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 is proposing to amend 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.T08-0058 to read as follows:

#### § 165.T08-0058 Safety Zone; Monongahela, Mile 23.8 to Mile 26.0, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Monongahela River from mile 23.8 to mile 26.

(b) *Effective period.* This section is effective from March 23, 2020 through April 6, 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.

#### A.W. Demo,

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

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#### 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:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish 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 proposed 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. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before March 4, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0057 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST2 Trevor Vannatta, Waterways Management U.S. Coast Guard; telephone 412-221-0807, email [Trevor.J.Vannatta@uscg.mil](mailto:Trevor.J.Vannatta@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, Purpose, and Legal Basis

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 existing electrical conductor with new higher ampacity electrical conductor. The conductor pull will take place at mile 29 near Mitchell Power Plant on the Monongahela River near Pittsburgh, PA. Hazards from the conductor pull include danger to the navigability of the waterway due to obstruction by equipment. The Captain of the Port Pittsburgh (COTP) has determined that potential hazards associated with the maintenance work would be a safety concern for anyone transiting the river.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after the scheduled maintenance activity. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

## III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from March 2, 2020 through March 20, 2020. The safety zone would 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. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a “significant

regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 certifies under 5 U.S.C. 605(b) that this proposed rule would 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 proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would 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 proposed 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 proposed 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed 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. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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#### A.W. Demo,

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

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 10

[Docket No. FWS-HQ-MB-2018-0090; FF09M29000-201-FXMB123209000000]

RIN 1018-BD76

#### Migratory Bird Permits; Regulations Governing Take of Migratory Birds; Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Supplementary proposed rule; intent to prepare an environmental impact statement.

**SUMMARY:** This document advises that we, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft environmental impact statement pursuant to the National Environmental Policy Act of 1969 (NEPA). The Service hereby notifies Federal, State, and local agencies, tribes, and the public of our intentions to evaluate the potential environmental impacts of a proposal to adopt a regulation that clarifies that the Migratory Bird Treaty Act's prohibitions on pursuing, hunting, taking, capturing, killing, or attempting to do the same, apply only to actions directed at migratory birds, their nests, or their eggs, and, therefore, do not extend to incidental take, which occurs when injury or mortality to migratory birds results from, but is not the purpose of, an activity. The review will analyze the environmental effects of the proposed approach and will provide detailed analysis of the environmental effects of the proposed rule. We invite input from other Federal and State agencies, tribes, nongovernmental organizations, and members of the public on the scope of the proposed NEPA analysis, the pertinent issues we should address, and alternatives to our proposed approach for implementing the MBTA. We will hold multiple public scoping webinars to inform the public about the proposal.

#### DATES:

**Comment submission:** Public scoping will begin with the publication of this document in the **Federal Register** and will continue through March 19, 2020.