

covered entities accountable. The circumstances of the COVID-19 pandemic are significant cause for concern, and I believe the Commission has responded with workable, targeted solutions aimed at ensuring our policies remain intact when the rigor of our regulations prove too burdensome to balance with competing overarching financial stability concerns.

However, as I have maintained throughout this process, delaying IM requirements as a means to provide temporary, targeted relief to address increased market volatility seems counterintuitive.<sup>3</sup> Moreover, as we continue to prolong compliance, we inevitably invite further requests for deferral of an indefinite nature. As the ten year anniversary of the Dodd-Frank Act<sup>4</sup> approaches, we cannot presume that the risks this core-reform seeks to address have morphed into anything of lesser concern, and I will not support any further relief absent truly compelling facts and lockstep agreement with the prudential regulators responsible for establishing margin requirements for swap dealers and major swap participants within their respective jurisdictions.

### Appendix 3—Concurring Statement of Commissioner Dan M. Berkovitz

I concur with issuing for public comment the proposal to extend the swap initial margin compliance date to September 1, 2022 for certain financial entities that have smaller swap portfolios (“Proposal”).

This is the second extension for these entities. The original compliance date was September 1, 2020. The reasons for this proposed extension are essentially the same as the first extension. The first extension was meant to avoid congestion in negotiating and implementing thousands of initial margin arrangements for the approximately 700 entities that would otherwise have needed to enter into initial margin arrangements by September 1, 2020. The extension split the compliance timeline for the smaller swap portfolio entities from the timeline for the entities with larger portfolios. The larger portfolio entities were still expected to comply by September 1, 2020, but the compliance date for the smaller entities was extended to September 1, 2021. However, more recently, in light of the disruptions caused by the Covid-19 pandemic, the compliance date for the larger swap portfolio entities was extended to September 1, 2021, thus again establishing the same compliance date for both the larger and smaller swap portfolio groups.

Although the Proposal is based on essentially the same rationale as the first extension for the smaller entities, I am not presupposing that the full extension is necessary. The smaller swap portfolio entities and their swap dealers will have had

nearly six years to prepare for the deadline as of September 1, 2021. These entities, as well as the larger portfolio entities for which September 1, 2021 is the deadline, will have had plenty of time to spread the negotiation and implementation process out over those many years. It is my understanding that many of the larger swap portfolio entities were already well on the way to completing the necessary documentation when the Covid-19 pandemic struck. The Proposal includes several questions as to whether the further extension in the Proposal could increase costs by possibly stopping and restarting negotiations again. In determining whether an extension will be finalized in regulation, the Commission will benefit from input from the public through the notice and comment process provided for in the Administrative Procedure Act.

For these reasons, I concur in the issuance of the Proposal and look forward to comments from the public.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2020–0395]

RIN 1625–AA00

### Safety Zone; Ohio River, Newburgh, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 777.3 to MM 778.3. This action is necessary to provide for the safety of life on these navigable waters near Newburgh, IN, during a fireworks display on September 5, 2020. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Ohio Valley 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 August 10, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG–2020–0395 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, or email MST3 Jackson U.S. Coast Guard, telephone 502–779–5347, email [secohv-wwm@uscg.mil](mailto:secohv-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, Purpose, and Legal Basis

On June 23, 2020, Historic Newburgh, Inc. notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. through 10 p.m. on September 5, 2020. The fireworks are to be launched from the shore near the city of Newburgh, IN, with a fallout radius occurring over the Ohio River. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Sector Ohio Valley (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone between mile marker (MM) 777.3 to MM 778.3.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the one-mile segment of the Ohio River before, during, and after the scheduled event. 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 9:30 p.m. through 10 p.m. on September 5, 2020. The safety zone will cover all navigable waters, extending the entire width of the river, from mile marker (MM) 777.3 to MM 778.3. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. 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

<sup>3</sup>Rostin Behnam, Commissioner, Statement of Commissioner Rostin Behnam Regarding Interim Final Rule with Request for Comment on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (May 28, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement052820>.

<sup>4</sup>Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

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 temporary safety zone. This safety zone restricts transit on a one-mile segment of the Ohio River for thirty minutes on one day. Moreover, the Coast Guard would issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and Marine Safety Information Bulletins (MSIBs) about this safety zone so that waterway users may plan accordingly for this short restriction on transit, and the rule would allow vessels to request 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 thirty minutes that would prohibit entry within a one mile segment of the Ohio River. 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. 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.

We accept anonymous comments. All comments received will be posted

without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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.T08–0395 to read as follows:

##### § 165.T08–0395 Safety Zone; Ohio River, Newburgh, IN.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Ohio River between MM 777.3 to MM 778.3 in Newburgh, IN.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, entry into the safety zone, described in paragraph (a) of this section, is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(c) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners and the

Local Notice to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

(d) *Enforcement Period.* This section will be enforced from 9:30 p.m. to 10 p.m. on September 5, 2020.

Dated: July 1, 2020.

**A.M. Beach,**

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

[FR Doc. 2020–14761 Filed 7–9–20; 8:45 am]

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#### DEPARTMENT OF VETERANS AFFAIRS

##### 38 CFR Part 3

**RIN 2900–AQ95**

##### Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations regarding character of discharge determinations. VA proposes to modify the regulatory framework for discharges considered “dishonorable” for VA benefit eligibility purposes, such as discharges due to “willful and persistent misconduct,” “an offense involving moral turpitude,” and “homosexual acts involving aggravating circumstances or other factors affecting the performance of duty.” VA also proposes to extend a “compelling circumstances” exception to certain regulatory bars to benefits in order to ensure fair character of discharge determinations in light of all pertinent factors.

**DATES:** Comments must be received on or before September 8, 2020.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](https://www.Regulations.gov); by mail or hand-delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to “RIN 2900–AQ95—Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except

holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](https://www.Regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Olumayowa Famakinwa, Policy Analyst, Regulations Staff (210), Compensation Service (21C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

#### SUPPLEMENTARY INFORMATION:

##### I. Existing Character of Discharge Determination Process

Eligibility for most VA benefits requires that a former service member be a “veteran.” “Veteran” status is bestowed to former service members “who served in the active military, naval, or air service, and who [were] discharged or released therefrom under conditions other than dishonorable.” 38 U.S.C. 101(2). Assuming the active service requirement is met, VA relies primarily on a former service member's character of service designated by the Armed Forces to determine whether a former service member was separated from service “under conditions other than dishonorable.” See 38 U.S.C. 101(2), (18); see also 38 CFR 3.1(a), (d). The Armed Forces characterize discharge or release from service into one of five categories: Honorable, under honorable conditions (general), other than honorable (OTH), bad conduct (adjudicated by a general court or special court-martial), or dishonorable (or dismissal in the case of commissioned officers). The Armed Forces also has three categories of uncharacterized administrative separations: entry-level separation, void enlistment, or dropped from the rolls.

Section 3.12 of title 38, Code of Federal Regulations (CFR), provides the criteria used by VA adjudicators to determine character of discharge for purposes of benefit eligibility for former service members. First, regardless of the Armed Forces' characterization of service, there are six statutory bars to benefits noted in 38 U.S.C. 5303(a) and reiterated in paragraph (c) of 38 CFR 3.12. The statutory bars pertain to former service members discharged or released (1) as a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful orders of competent military authorities; (2) by reason of the sentence of a general court-martial; (3) by resignation of an officer for the good of