



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2018-0239]**

**RIN 1625-AA00**

**Safety Zone; Tennessee River, Gilbertsville, KY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters of the Tennessee River. This action is necessary to provide for the safety of life on these navigable waters near the Kentucky Dam Marina, Gilbertsville, KY, during a fireworks display. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

**DATES:** This rule is effective from 6:50 p.m. through 10:10 p.m. on June 30, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0239 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 MST3 Joseph Stranc, Marine Safety Unit Paducah Waterways Division, U.S. Coast Guard; telephone 270-442-1621 ext. 2124, email [Joseph.B.Stranc@uscg.mil](mailto:Joseph.B.Stranc@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	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

On January 17, 2018, the Kentucky Dam Marina notified the Coast Guard that it would be conducting a fireworks display from 7 p.m. through 10 p.m. on June 30, 2018. The fireworks are to be launched from the break wall of Kentucky Dam Marina. In response, on April 26, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Tennessee River, Gilbertsville, KY (83 FR 18241). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 29, 2018, we received no comments.

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 contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with this fireworks display.

## **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 fireworks to be used in this June 30, 2018 display will be a safety

concern for anyone within a 350-foot radius from the fireworks launch site on the Kentucky Dam Marina break wall in Gilbertsville, KY. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published April 26, 2018. However, we have noticed an error in the title of the proposed rule, which included “Ohio” River, instead of “Tennessee” River. The regulatory text of this rule corrects an error in the title of the regulatory text of this temporary final rule.

This rule establishes a temporary safety zone from 6:50 p.m. through 10:10 p.m. on June 30, 2018. The safety zone will cover all navigable waters within a 350-foot radius from the fireworks launch site on the Kentucky Dam Marina break wall in Gilbertsville, KY. The duration of the zone is intended to ensure the safety of vessels on these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the 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 Channel 16 or by phone at 1-800-253-7465. If permission is granted, all persons and vessels must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative. The COTP or a designated representative will inform the public through

Broadcast Notice to Mariners (BNMs) of the enforcement period for the safety zone as well as the date and time of enforcement.

## **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-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone, which will impact a 350-foot designated area of the Tennessee River for approximately three hours on one evening. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners (BNMs) 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 received no comments from the Small Business Administration on this rulemaking. 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 temporary 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 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.

*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 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 approximately three hours that will prohibit entry within 350 feet of a break wall at Kentucky Dam Marina in Gilbertsville, KY. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. 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.T08-0239 to read as follows:

§ 165.T08-0239 Safety Zone; Tennessee River, Gilbertsville, KY.

(a) Location. The following area is a safety zone: all navigable waters of the Tennessee River at mile marker (MM) 23 within a 350-foot radius from the fireworks launch site on the Kentucky Dam Marina break wall in Gilbertsville, KY.

(b) Effective date. This section is effective from 6:50 p.m. through 10:10 p.m. on June 30, 2018.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

(2) 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 Channel 16 or by phone at 1-800-253-7465.

(3) If permission is granted, all persons and vessels must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notice to Mariners (BNMs) of the enforcement period for the safety zone as well as the date and time of enforcement.

Dated: June 19, 2018

M.B. Zamperini

Captain, U.S. Coast Guard,

Captain of the Port Sector Ohio Valley.

[FR Doc. 2018-14020 Filed: 6/28/2018 8:45 am; Publication Date: 6/29/2018]