



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**Docket Number USCG-2019-0127**

**RIN 1625-AA00**

**Safety Zone; Cumberland River, Kentucky**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters between mile marker 0.0 and mile marker 3.0 of the Cumberland River in Smithland, Kentucky. The safety zone is needed to protect personnel, vessels, and personal property from potential hazards created by vessel wake during a high water event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until March 15, 2019. For the purposes of enforcement, actual notice will be used from February 26, 2019 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule will be enforced from February 26, 2019 to March 15, 2019, unless the lower gauge at Smithland Lock and Dam falls below 50 feet, in which case the enforcement of this rule will be

terminated.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0127 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 MST2 Dylan Caikowski, Marine Safety Unit Paducah, U.S. Coast Guard; telephone 270-442-1621 ext. 2120, email STL-SMB-MSUPaducah-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	<i>Federal Register</i>
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 it is impracticable. We must establish this emergency safety zone by February 26, 2019 to

ensure the safety of residents and the protection of personal property near the riverfront in Smithland, Kentucky during a high water event.

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 delaying the effective period will compromise the safety of residents, vessels, and personal property near the riverfront of Smithland, Kentucky during a high water event..

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined a safety zone is needed to protect personnel, vessels, and personal property from potential hazards created by vessel wake during a high water event.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from February 26, 2019 to March 15, 2019 or when the lower gauge at Smithland Lock and Dam falls below 50 feet, whichever occurs first. The safety zone will cover all navigable waters between mile marker 0.0 and mile marker 3.0 of the Cumberland River in Smithland, Kentucky. The duration of the zone is intended to protect personnel, vessels, and the personal property in these navigable waters during the high water event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The COTP or a designated representative will inform the public through broadcast notices to mariners of any changes in the planned schedule.

### **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, duration, and location of the safety zone. This safety zone will only be enforced for 18 days on a three-mile stretch of the Cumberland River near Smithland, Kentucky, while the area is experiencing a high water event. The enforcement of the zone will be terminated once the lower gauge at Smithland Lock and Dam falls below 50 feet, whichever occurs first. While entry is prohibited, vessels may request permission from the COTP or a designated representative 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 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 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 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 temporary safety zone that will cover all navigable waters between mile marker 0.0 and mile marker 3.0 of the Cumberland River in Smithland, Kentucky. The safety zone is intended to protect personnel, vessels, and personal property in these navigable waters during a high water event. 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 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:** 46 U.S.C. 70034; 46 U.S.C. 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.T08-0127 to read as follows:

**§ 165.T08-0127 Safety Zone; Cumberland River, Smithland, KY.**

(a) Location. The safety zone will encompass all waters of the Cumberland River between mile marker 0.0 and mile marker 3.0.

(b) Effective dates. This section is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until March 15, 2019. For the purposes of enforcement, actual notice will be used from February 26, 2019 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) Period of enforcement. This section will be enforced from February 26, 2019 to March 15, 2019, unless the lower gauge at Smithland Lock and Dam falls below 50 feet, in which case the enforcement of this rule will be terminated.

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

(2) Persons or vessels desiring entry to or passage through the safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channel 16 or by telephone at 502-779-5400.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of any changes in the planned

schedule.

Dated: February 26, 2019.

M. B. Zamperini,  
Captain, U.S. Coast Guard,  
Captain of the Port Sector Ohio Valley.

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