



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0113]

RIN 1625-AA00

Safety Zone; Lake of the Ozarks, Osage Beach, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Lake of the Ozarks. This action is necessary to provide for the safety of life on these navigable waters near the Tan-Tar-A Resort, Osage Beach, MO during a fireworks display on May 4, 2019. This rulemaking will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

DATES: This rule is effective on May 4, 2019 from 8:45 to 9:45 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0113 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 Lieutenant Commander Christian Barger, Waterways Management

Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314-269-2560,
email Christian.J.Barger@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
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

On February 18, 2019, the Premier Pyrotechnics Inc. notified the Coast Guard that it would be conducting a fireworks display from 9 to 9:30 p.m. on May 4, 2019, for a private event taking place at the Tan-Tar-A Resort in Osage Beach, MO. The fireworks are to be launched from a barge in the Lake of the Ozarks approximately 250 feet southeast of the southern point of the resort near mile marker 26. In response, on March 15, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Lake of the Ozarks, Osage Beach, MO (84 FR 9468). 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 April 15, 2019, we received five comments, all of which were in favor of the safety zone.

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**. The application for this fireworks display was not received in sufficient time to permit both a comment period and for making this rule effective 30 days after publication in the

Federal Register. The determination of good cause was made due to the fact that no comments in opposition to the proposed rule were received regarding this event, that this area is routinely used for fireworks displays throughout the year, and the fact that 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 the barge launched fireworks display at this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks to be used in this May 4, 2019 display will be a safety concern for anyone within a 300-foot radius of the fireworks barge. 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 five comments on our NPRM published March 15, 2019. All five comments recognized the inherent risks involved with fireworks displays and indicated favor for the proposed rule. One comment posed a concern about providing an alternate route to avoid the safety zone to ensure there would not be a buildup of vessels surrounding the zone. Waters of Lake of the Ozarks outside of the established safety zone will be available and open for all traffic, as normal. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 8:45 to 9:45 p.m. on May 4, 2019. The safety zone would cover all navigable waters within 300 feet of a barge in the Lake of the Ozarks located approximately 250 feet southeast of the southern point of the Tan-Tar-a Resort near mile marker 26. 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 would 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 duration of the rule and the location of the safety zone within the waterway. This regulatory action would be in place for a period of 1 hour, within a 300 foot radius of the fireworks barge, close to the shoreline of the Tan-Tar-A Resort in Osage Beach, MO. The majority of the waterway

would remain open to traffic during the fireworks display.

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 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 1 hour that will prohibit entry within 300 feet of a barge in the Lake of the Ozarks located approximately 250 feet southeast of the southern point of the Tan-Tar-A Resort near mile marker 26. 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: 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.T08-0113 to read as follows:

§ 165.T08-0113 Safety Zone; Lake of the Ozarks, Osage Beach, MO.

(a) Location. The following area is a safety zone: all navigable waters of the Lake of the Ozarks within a 300-foot radius of a barge-launched fireworks display located approximately 250 feet southeast of the southern point of the Tan-Tar-A Resort near mile marker 26.

(b) Period of enforcement. This section will be enforced from 8:45 p.m. through 9:45 p.m. on May 4, 2019.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, persons and vessels are prohibited from entering the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector

Upper Mississippi River.

(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 by telephone at 314-269-2332.

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

(d) Informational broadcasts. The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through Local Notices to Mariners (LNMs), and/or actual notice.

Dated: April 18, 2019

S. A. STOERMER,
CAPTAIN, U.S. Coast Guard,
Captain of the Port Sector Upper Mississippi River.
[FR Doc. 2019-08126 Filed: 4/22/2019 8:45 am; Publication Date: 4/23/2019]