



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0067]**

**RIN 1625-AA00**

**Safety Zone; Lake of the Ozarks, Mile Marker .5 on the Main Channel of the Lake of the Ozarks Near Bagnel Dam, Lake Ozark, MO**

**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 Lake of the Ozarks. This action is necessary to provide for the safety of life on these navigable waters during fireworks displays. This regulation prohibits persons and vessels from being in the safety zone during the specified periods of enforcement unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 10:15 p.m. on August 15, 2020. For purposes of enforcement, actual notice will be used from 9:15 p.m. on May 23, 2020 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0067 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, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 309-737-1982, email [Christian.J.Barger@uscg.mil](mailto: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	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On December 10, 2019, Celebration Cruises notified the Coast Guard that it will be conducting fireworks displays from 9:15 p.m. through 10:15 p.m. on May 23, June 20, June 27, July 4, July 11, July 18, July 25, August 1, August 8, and August 15, 2020. The fireworks are to be launched from a barge on Lake of the Ozarks at mile marker .5 on the main channel of Lake of the Ozarks near Bagnel Dam in Lake Ozark, MO. In response, on March 26, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled *Safety Zone; Lake of the Ozarks, Mile Marker .5 on the Main Channel of the Lake of the Ozarks Near Bagnel Dam, Lake Ozark, MO* [85 FR 17038]. There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to

these fireworks displays. During the comment period that ended April 27, 2020, we received four 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 impracticable because immediate action is needed to respond to the potential safety hazards associated with the fireworks displays.

### **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 Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the fireworks to be used on May 23, June 20, June 27, July 4, July 11, July 18, July 25, August 1, August 8, and August 15, 2020 will be a safety concern for anyone within a 420-foot radius of the 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 four comments on our NPRM published March 26, 2020. Two of the comments were in full support of the proposed safety zone as it was written. The third comment was also in support of the proposed rule, however the commentor had a few questions; we will answer them here. The fourth comment was not applicable to this rule.

The first question was regarding the definition of a vessel. As defined in 33 Code of Federal Regulations (CFR) 160.3, “*Vessel* means every description of watercraft or

other artificial conveyance used, or capable of being used, as a means of transportation on water” and includes craft on and below the surface of the water. The second question was regarding the definition of navigable waters as it applied to this regulation prohibiting vessels and persons from being on, or in the surrounding waters around, Bagnel Dam. The safety zone that is being established at mile marker .5 on the Main Channel will only cover an area within a 420-foot radius from the fireworks barge and will not cover any portion of land, any permanent structures (including Bagnel Dam), nor the waters immediately adjacent to either side of Bagnel Dam. The enforcement location of the regulation has been updated to include specification of the 420-foot radius.

This rule establishes a safety zone from 9:15 p.m. through 10:15 p.m. on May 23, June 20, June 27, July 4, July 11, July 18, July 25, August 1, August 8, and August 15, 2020. The safety zone will cover all navigable waters within 420 feet of a fireworks barge on Lake of the Ozarks at mile marker .5 on the main channel of Lake of the Ozarks near Bagnel Dam in Lake Ozark, MO . The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:15 to 10:15 p.m. fireworks displays. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The fourth comment expressed concern that the Coast Guard had misinterpreted Executive Order 13771. The fourth comment related to Executive Order 13771 is beyond the scope of the regulation because the Executive Order that the comment refers to is not applicable to this regulation.

## **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, and duration of the temporary safety zone. This action involves only ten, one-hour long, occurrences in which persons and vessels will be prohibited from entering an area within 420 feet of a fireworks barge on Lake of the Ozarks.

*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 call or email 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.

*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, 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 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 only one hour on ten different days that would prohibit entry within 420 feet of a fireworks barge on Lake of the Ozarks at mile marker .5 on the main channel of Lake of the Ozarks near Bagnel Dam in Lake Ozark, MO. 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. 1. A 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.

*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.

**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.T08-0067 to read as follows:

**§ 165.T08-0067 Safety Zone; Lake of the Ozarks, Mile .5 on the Main Channel of the Lake of the Ozarks near Bagnel Dam, Lake Ozark, MO**

(a) *Location.* The following area is a safety zone: Lake of the Ozarks, within a 420-foot radius around a fireworks barge located at mile marker .5 on the main channel of the Lake of the Ozarks near Bagnel Dam in Lake Ozark, MO.

(b) *Period of enforcement.* This section is effective from 9:15 p.m. through 10:15 p.m. on May 23, June 20, June 27, July 4, July 11, July 18, July 25, August 1, August 8, and August 15, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, 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 while navigating in the regulated area.

(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 (LNM).

Dated: May 15, 2020

S. A. STOERMER

CAPTAIN, U.S. Coast Guard,

Captain of the Port Sector Upper Mississippi River.

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