

### 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 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

- 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

- 2. Add § 100.T01–0545 to read as follows:

**§ 100.T01–0545 Special Local Regulation; Maggie Fischer Memorial Cross Bay Swim, Great South Bay, Brightwaters, NY.**

(a) *Regulated Area.* The regulations in this section apply to the following area: Waters of the Great South Bay, NY, within 100 yards of the race course. Starting Point at the Fire Island Lighthouse Dock in position at 40°38′01″ N, 073°13′07″ W; then north-by-northwest to a point in position at 40°38′52″ N, 073°13′09″ W; then north-by-northwest to a point in position at 40°39′40″ N, 073°13′30″ W; then north-by-northwest to a point in position at 40°40′30″ N, 073°14′00″ W; and then north-by-northwest, finishing at Gilbert Park, Brightwaters, NY at position 40°42′25″ N, 073°14′52″ W. These coordinates are approximate and are based on datum NAD 1983.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Long Island Sound (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or the Designated Representative.

(2) To seek permission to enter, contact the COTP or the Designated Representative via VHF–FM marine channel 16 or by contacting the Coast Guard Sector Long Island Sound Command Center at (203) 468–4401. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the Designated Representative.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 12:30 p.m. on August 12, 2021.

Dated: August 9, 2021.

**S.A. Koch,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Long Island Sound.*

[FR Doc. 2021–17285 Filed 8–10–21; 11:15 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG–2021–0615]

RIN 1625–AA00

### Safety Zone; Ohio River, Owenboro, KY

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone from mile marker 756 to 757 of the Ohio River. The safety zone is needed to protect life and the marine environment from potential hazards created by the Owensboro Fireworks and Bridge Lights show display. This temporary final rule 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.

**DATES:** This rule is effective from 6 p.m. through 9 p.m. on August 21, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0615 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Christopher Roble, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5336, 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 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 safety zone by August 21, 2021, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

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 public interest because immediate action is needed to ensure the safety of the participants and vessels during the Owensboro Fireworks and Bridge Lights show on August 21, 2021.

## 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 Ohio Valley (COTP) has determined that potential hazards associated with the Owensboro Fireworks and Bridge Lights show on August 21, 2021, will be a safety concern for anyone within a 1.0 mile radius of the fireworks barge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the Owensboro Fireworks and Bridge Lights show is occurring.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone on the Ohio River, starting at mile marker 756 and ending at 757, extending from bank to bank within the river. The safety zone will be enforced from 6 p.m. through 9 p.m. on August 21, 2021. The duration of the zone is intended to protect personnel, vessels,

and the marine environment in these navigable waters while the Owensboro Fireworks and Bridge Lights show is taking place. No vessel or person will 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. 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).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow 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 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 (Pub. L. 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 3 hours spread over the course of 1 day that would prohibit entry within 1 mile of the fireworks barge. 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.

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### 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. 00170.1, Revision No. 01.2.

- 2. Add § 165.T08–0438 to read as follows:

### § 165.T08–0438 Safety Zone; Ohio River, Owensboro, KY.

(a) *Location.* The following area is a safety zone: All navigable waters of the

Ohio River between MM 756 to MM 757 in Owensboro, KY.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-FM radio channel 16 or phone at 1-800-253-7465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 6 p.m. through 9 p.m. on August 21, 2021.

Dated: August 5, 2021.

A.M. Beach,

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

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## DEPARTMENT OF EDUCATION

### 34 CFR Chapter VI

[Docket ID ED-2021-OS-0107]

#### Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers

**AGENCY:** Office of the Secretary, Department of Education.

**ACTION:** Interpretation.

**SUMMARY:** The U.S. Department of Education (Department) issues this interpretation to revise and clarify its position on the legality of State laws and regulations that govern various aspects of the servicing of Federal student loans, such as preventing unfair or deceptive practices, correcting misapplied payments, or addressing refusals to communicate with borrowers. The Department concludes that these State laws are preempted only in limited and discrete respects, as further discussed in this interpretation. In addition, this interpretation will help facilitate close coordination between the

Department and its State partners to further enhance both servicer accountability and borrower protections. This interpretation revokes and supersedes the interpretation published on March 12, 2018, "Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers" (2018 interpretation).

**DATES:** This interpretation is effective on August 12, 2021. We must receive your comments on or before September 13, 2021.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under FAQ.

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the interpretation, address them to Beth Grebeldinger, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Room 113F4, Washington, DC 20202.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Beth Grebeldinger, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Room 113F4, Washington, DC 20202. Telephone: 202-377-4018. Email: [Beth.Grebeldinger@ed.gov](mailto:Beth.Grebeldinger@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

*Invitation to comment:* We are inviting comment on this interpretation because we value the public's input and

perspective on these critical issues. We will consider public comment received and determine whether it is appropriate to modify or supplement this document.

*Background:* On March 12, 2018, the Department published in the **Federal Register** the 2018 interpretation (83 FR 10619). The 2018 interpretation set forth the Department's position at the time on the legality of several State laws regulating Federal student loan servicers, which the Department found to be broadly preempted by Federal law. In particular, the 2018 interpretation opined that State regulation of the servicing of loans under the William D. Ford Federal Direct Loan Program (Direct Loans) "impedes uniquely Federal interests." *Id.* at 10,620. The 2018 interpretation also opined that State regulation of the servicing of loans under the Federal Family Education Loan Program (FFEL Loans) "is preempted to the extent that it undermines uniform administration of the program." *Id.*

Federal courts have had the opportunity to consider the Department's position on preemption in several recent decisions. Those courts consistently declined to give any deference to the 2018 interpretation, finding it deserving of "little weight." *Nelson v. Great Lakes Educ. Loan Services, Inc.*, 928 F.3d 639, 651 n.2 (7th Cir. 2019); *see also Lawson-Ross v. Great Lakes Higher Educ. Corp.*, 955 F.3d 908, 921 n.13 (11th Cir. 2020) (same); *New York v. Pennsylvania Higher Educ. Assistance Agency*, 19 Civ. 9155, 2020 WL 2097640 at \*16 n.14 (S.D.N.Y. May 1, 2020) (same); *Student Loan Servicing Alliance v. DC*, 351 F. Supp. 3d 26, 48-51 (D.D.C. 2018). Their analyses reveal the flaws in the 2018 interpretation's insubstantial justifications for its broad claims to preempt State laws on student loan servicing.

The court in *Student Loan Servicing Alliance* analyzed the 2018 interpretation in some detail, and its analysis has been largely followed by the other courts that have considered these preemption issues. The court found that the 2018 interpretation constitutes informal guidance, having not undergone any formal review process prescribed by statute. *See* 351 F. Supp. 3d at 48-49. Thus, under *Wyeth v. Lavine*, 555 U.S. 555 (2009), the 2018 interpretation would be entitled only to *Skidmore* deference, which turns on its "thoroughness, consistency, and persuasiveness." *Wyeth*, 555 U.S. at 577. The court went on to find that the views expressed in the 2018 interpretation warrant no deference because they are conclusory