

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2024–0259]

RIN 1625–AA00

#### Safety Zone; Tennessee River, Saltillo, TN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish 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 Saltillo, TN, during fireworks display on July 4th, 2024. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 10, 2024.

**ADDRESSES:** You may submit comments identified by docket number USCG–2024–0259 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the

**SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST3 Joshua D Carter, Waterways Management Division; [Joshua.D.Carter@uscg.mil](mailto:Joshua.D.Carter@uscg.mil) or 615–736–5421 x2104.

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 MM Mile marker  
 NPRM Notice of proposed rulemaking  
 § Section  
 U.S.C. United States Code

## II. Background, Purpose, and Legal Basis

On March 4, 2024, the Town of Saltillo notified the Coast Guard that it will be conducting fireworks display from 8 p.m. to 10 p.m. on July 4, 2024. The fireworks are to be launched from land next to the Tennessee River at Mile Marker (MM) 170, with firework fallout encroaching on the river channel. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 100-yard radius of the barge, and as such is establishing a safety zone from MM169 to MM171 of the Tennessee River.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 1-mile radius of the fireworks launch zone before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

## III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 8 p.m. to 10 p.m. on July 4, 2024. The safety zone would cover all navigable waters from MM 169 to MM 171 of the Tennessee River. The duration of the zone is intended to ensure the safety of vessels and 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. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM 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. Vessel traffic would be able to safely transit this stretch of waterways before and after the implementation of the safety zone which would impact a small designated area of the Tennessee River for less than 2 hours during the night when vessel traffic is normally low. Moreover, 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 proposed rule would 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 IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see

**ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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 proposed rule has implications for federalism or Indian tribes, please call or email 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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a safety zone lasting 2 hours that would prohibit entry within 1 mile of a fireworks launch site. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### 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.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

**Submitting comments.** We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type

USCG–2024–0259 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

**Viewing material in docket.** To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

**Personal information.** We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

#### 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 is proposing to amend 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08–0259 to read as follows:

#### § 165.T08–0259 Safety Zone; Tennessee River, Sault Ste. Marie, TN.

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

Tennessee River from Mile Markers 169 to 171.

(b) *Enforcement period.* This section will be enforced from 8 p.m. to 10 p.m. on July 4, 2024.

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

(2) Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF-FM channel 16 (156.8 MHz) or by telephone at 361-939-0450.

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

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: April 23, 2024.

**H.R. Mattern,**

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

[FR Doc. 2024-09923 Filed 5-9-24; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 1**

[Docket No. PTO-P-2024-0003]

RIN 0651-AD76

**Terminal Disclaimer Practice To Obviate Nonstatutory Double Patenting**

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The USPTO proposes to amend the rules of practice to add a new requirement for an acceptable terminal disclaimer that is filed to obviate (that is, overcome) nonstatutory double patenting. The proposed rule change would require terminal disclaimers filed to obviate nonstatutory double patenting to include an agreement by the disclaimant that the patent in which the terminal disclaimer is filed, or any patent granted on an application in which a terminal disclaimer is filed, will be enforceable only if the patent is not tied and has never been tied directly

or indirectly to a patent by one or more terminal disclaimers filed to obviate nonstatutory double patenting in which: any claim has been finally held unpatentable or invalid as anticipated or obvious by a Federal court in a civil action or by the USPTO, and all appeal rights have been exhausted; or a statutory disclaimer of a claim is filed after any challenge based on anticipation or obviousness to that claim has been made. This action is being taken to prevent multiple patents directed to obvious variants of an invention from potentially deterring competition and to promote innovation and competition by allowing a competitor to avoid enforcement of patents tied by one or more terminal disclaimers to another patent having a claim finally held unpatentable or invalid over prior art.

**DATES:** Comments must be received by July 9, 2024 to ensure consideration.

**ADDRESSES:** For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). To submit comments via the portal, one should enter docket number PTO-P-2024-0003 on the homepage and click “search.” The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this proposed rule and click on the “Comment” icon, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe® portable document format (PDF) or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of or access to comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Susy Tsang-Foster, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7711; or Nicholas Hill, Legal Advisor, Office of Patent Legal Administration, at 571-270-1485.

**SUPPLEMENTARY INFORMATION:** Under U.S. law, a person is entitled to a patent, absent certain exceptions, for an invention that is new and not obvious as of the effective filing date of the

claimed invention. Because a patent owner may file continuing applications and obtain follow-on patents with claims that have the same effective filing date as those of the original patent, patent owners may pursue multiple patents with claims that vary in only minor ways from each other. A patent owner may also, under certain circumstances (for example, when two applications are filed on the same day), obtain patents that are not part of the same patent family for obvious variants of an invention. As a result, obviousness-type double patenting (also referred to as nonstatutory double patenting) may exist between patents and/or applications in the same patent family or in a different patent family. Under the doctrine of obviousness-type double patenting, the USPTO rejects patentably indistinct claims filed in patent applications when these applications and the applications and/or patents whose claims form the basis of the nonstatutory double patenting: (1) have the same inventive entity, at least one common (joint) inventor, a common applicant, and/or a common owner/assignee; or (2) are not commonly owned but are owned by parties to a joint research agreement.

Under current practice, a patent applicant or patent owner (also referred to as a patentee) may, in most instances, obviate nonstatutory double patenting by filing a terminal disclaimer meeting the requirements of 37 CFR 1.321(c) or (d). A terminal disclaimer will ensure that the term of the patent with the terminal disclaimer will not extend beyond the term of the patent forming the basis of the nonstatutory double patenting. To prevent the harassment of an alleged infringer by multiple parties, under current 37 CFR 1.321(c) or (d) a terminal disclaimer must state that the patent in which the terminal disclaimer is filed shall be enforceable only for and during the period that the patent is commonly owned, or commonly enforced, with the patent which formed the basis for the nonstatutory double patenting.

Even with the protections currently provided by a terminal disclaimer, multiple patents tied by terminal disclaimers that are directed to obvious variants of an invention could deter competition due to the prohibitive cost of challenging each patent separately in litigation or administrative proceedings.

Currently, a terminal disclaimer filed to obviate nonstatutory double patenting over a conflicting patent must include a disclaimer of term, if any, extending beyond the term of the conflicting patent and a common ownership or common enforcement agreement. Under