



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0189]

RIN 1625-AA00

Safety Zone; Lower Mississippi River Mile 95.7 to 96.7; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone from Mile Marker (MM) 95.7 to MM 96.7 above Head of Passes (AHP) on the Lower Mississippi River (LMR) on April 12, 2016. This safety zone is necessary to protect persons and vessels from potential safety hazards associated with fireworks displays on or over navigable waterways. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

DATES: This rule is effective from 6:00 p.m. through 11:00 p.m. on April 12, 2016. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0189 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) James Gatz, Sector New Orleans, at (504) 365-2281 or James.C.Gatz@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP	Above Head of Passes
BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
MM	Mile Marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Public Participation and Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Documents mentioned in this rule, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For

more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

III. 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 the Coast Guard received information about this fireworks display on or about January 27, 2016. Due to the risks associated with an aerial barge-based fireworks display taking place on and over the waterway, a safety zone is needed. It would be impracticable to publish a NPRM because the safety zone must be established on April 12, 2016. This rule provides for a comment period and comments received will be reviewed and analyzed to assist the Coast Guard in future rulemakings establishing similar safety zones. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners (BNM).

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register. Providing a full 30-days notice would be impracticable because immediate action is needed to protect persons and property from the hazards associated with an aerial fireworks display taking place on and over the waterway.

IV. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. On April 12, 2016, a fireworks display will be launched from a barge positioned in the waterway adjacent to Mardi Gras World, an event venue located at MM 96.2 AHP on the Lower Mississippi River, in a high commercial traffic area near a tight river bend. Therefore, the Coast Guard has determined that a safety zone is needed to ensure safe navigation for all those in the vicinity of these fireworks displays.

V. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River, for one hour during the evening of April 12, 2016, to occur between 6 and 11 p.m. The safety zone will include the entire width of the Lower Mississippi River in New Orleans, LA from MM 95.7 to MM 96.7 AHP. Entry into this zone is prohibited unless permission has been granted by the COTP New Orleans, or a designated representative.

The COTP New Orleans will inform the public through BNMs of the one-hour enforcement period for the safety zone as well as any changes in the planned schedule. Mariners and other members of the public may also contact Coast Guard Sector New Orleans Command Center to inquire about the status of the safety zone, at (504) 365-2200.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order 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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This safety zone will only restrict navigation on the Lower Mississippi River from MM 95.7 to MM 96.7 AHP, for approximately one hour on April 12, 2016. Due to the limited scope and short duration of the safety zone, the impacts on routine navigation are expected to be minimal.

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.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit the safety zone area during the periods of enforcement. The safety zone will not have a significant economic impact on a substantial number of small entities because they are limited in scope and will be in effect for a short period of time. Before the enforcement periods, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the safety zone established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 establishment of a temporary safety zone for all waters of the Lower Mississippi River from MM 95.7 to MM 96.7 AHP. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under

ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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

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: 33 U.S.C. 1231; 50 U.S.C. 191; 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.T08-0189 to read as follows:

§ 165.T08-0189 Safety Zones; Lower Mississippi River Miles 95.7 to 96.7; New Orleans, LA.

(a) *Location.* The following area is a safety zone: All waters of the Lower Mississippi River from mile marker 95.7 to mile marker 96.7 Above Head of Passes, New Orleans, LA.

(b) *Enforcement period.* This rule is enforceable on April 12, 2016, for one hour in the evening to occur between 6:00 p.m. and 11:00 p.m. The one-hour enforcement period will be noticed as indicated under paragraph (d) of this section.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) New Orleans or designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. For this rule the COTP's designated representative is Vessel Traffic Service Lower Mississippi River.

(2) Vessels requiring deviation from this rule must request permission from the COTP New Orleans or a COTP New Orleans designated representative. They may be contacted on VHF-FM Channel 16 or 67, or through Vessel Traffic Service Lower Mississippi River at 504-365-2415.

(3) Persons and vessels permitted to deviate from this safety zone regulation and enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP New Orleans or the designated representative.

(d) *Information broadcasts.* The COTP New Orleans or a COTP New Orleans designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: March 30, 2016.

W. R. Arguin Jr.,
Captain, U.S. Coast Guard,
Acting Captain of the Port New Orleans.

[FR Doc. 2016-07729 Filed: 4/5/2016 8:45 am; Publication Date: 4/6/2016]