



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0083]

RIN 1625-AA08

Safety Zone; Mississippi Sound, Biloxi, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain navigable waters on the Mississippi Sound over the Biloxi Harbor Channel in Biloxi, MS. The proposed rulemaking is necessary to provide for the safety of life and property on these navigable waters during the 2018 Biloxi Air Show. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless specifically authorized by the Captain of the Port Sector Mobile (COTP) 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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0083 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 about this proposed rulemaking, call or email LT Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251-441-5940, email Kyle.D.Berry@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Mobile
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of Proposed Rulemaking
PATCOM	Patrol Commander
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On January 3, 2018, the sponsor for the 2018 Biloxi Air Show submitted an application for a marine event permit for the air show that will take place every day from 9 a.m. through 5 p.m. from July 19, 2018 through July 22, 2018. The air show will consist of various flight demonstrations over the Mississippi Sound in the Biloxi Harbor Channel in Biloxi, MS. Over the years, there have been unfortunate instances of aircraft mishaps that involve crashing during performances at various air shows around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows. The Captain of the Port Sector Mobile (COTP) has determined that a safety zone is necessary to protect the general public from hazards associated with aerial flight demonstrations.

The purpose of this rulemaking is to ensure the safety of vessels and persons during the air show on the navigable waters of the Mississippi Sound in the Biloxi Harbor Channel in Biloxi, MS. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on the Mississippi Sound within the positions of 30°23'22.6"N 88°50'54.9"W; 30°23'25.5"N 88°53'12.1"W; 30°22'52.3"N 88°50'55.8"W; 30°22'56.3"N 88°53'11.9"W over the Biloxi Harbor Channel in Biloxi, MS from 9 a.m. through 5 p.m. on July 19, 2018 through July 22, 2018. The proposed rulemaking is needed to provide for the safety of life and property on these navigable waters during the 2018 Biloxi Air Show. This proposed rulemaking restricts transit into, through, and within the zone unless specifically authorized by the COTP. No vessel or person would be permitted to enter the zone without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM would be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the zone.

Spectator vessels desiring to transit the zone may do so only with prior approval of the PATCOM and when so directed by that officer would be operated at a minimum

safe navigation speed in a manner which will not endanger any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the zone during the effective dates and times, unless cleared for entry by or through an official patrol vessel. Any spectator vessel may anchor outside the zone, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the zone in such a way that they shall not interfere with the progress of the air show. Such mooring must be complete at least 30 minutes prior to the establishment of the zone and remain moored through the duration of the air show.

The COTP or a designated representative may forbid and control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the zone, citation for failure to comply, or both.

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative would terminate enforcement of the safety zone at the conclusion of the air show.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 size, location, and duration of the proposed rulemaking. The proposed safety zone would take place on a small area of Mississippi Sound, during a short duration of only eight hours, lasting for only four days from July 19, 2018 through July 22, 2018. Additionally, the Coast Guard would issue Broadcast Notices to Mariners via VHF-FM marine channel 16 about the safety zone so that waterway users may plan accordingly for transits during this restriction, and the proposed rule also allows vessels to seek permission from the COTP or a designated representative 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 (Public Law 104-121), we want to assist small entities in understanding this proposed 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. 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 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 proposed rule would 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, which guides 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 on the Mississippi Sound,

within the positions of 30°23'22.6"N 88°50'54.9"W; 30°23'25.5"N 88°53'12.1"W; 30°22'52.3"N 88°50'55.8"W; 30°22'56.3"N 88°53'11.9"W over the Biloxi Harbor Channel in Biloxi, MS. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is 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 proposed 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.

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.

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.

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, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, 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.T08-0083 to read as follows:

§ 165.T08-0083 Safety Zone; Mississippi Sound, Biloxi, MS

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

of the Mississippi Sound, within the positions of 30°23'22.6"N 88°50'54.9"W;
30°23'25.5"N 88°53'12.1"W; 30°22'52.3"N 88°50'55.8"W; 30°22'56.3"N 88°53'11.9"W
over the Biloxi Harbor Channel in Biloxi, MS .

(b) Enforcement period. This section is effective from 9 a.m. on July 19, 2018
through 5 p.m. on July 22, 2018.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into,
transiting through, or exiting from this area is prohibited unless authorized by the Captain
of the Port Sector Mobile (COTP) or a designated representative. A designated
representative may be a Patrol Commander (PATCOM). The PATCOM will be aboard
either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted
on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(2) All persons and vessels not registered with the event sponsor as participants
or official patrol vessels are considered spectators. The "official patrol vessels" consist
of any Coast Guard, state, or local law enforcement and sponsor provided vessels
assigned or approved by the COTP to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with
prior approval of the PATCOM and when so directed by that officer will be operated at a
minimum safe navigation speed in a manner that will not endanger participants in the
zone or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit
of participants or official patrol vessels in the regulated area during the effective dates
and times, unless cleared for entry by or through an official patrol vessel.

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(6) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(7) The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The COTP or a designated representative can terminate enforcement of the safety zone at the conclusion of the event.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: February 2, 2018

M.R. MCLELLAN,
Captain, U. S. Coast Guard,
Captain of the Port Sector Mobile.

