



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0372]

RIN 1625-AA00

**Safety Zone; Lower Mississippi River, Mile Markers 94 to 97 Above Head of Passes,
New Orleans, LA**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for the navigable waters of the Lower Mississippi River between mile marker (MM) 94 and MM 97, above Head of Passes. This action is necessary to provide for the safety of life on these navigable waters during firework displays. This regulation prohibits vessels from entering the safety zone before, during, and after the firework displays unless authorized by the Captain of the Port Sector New Orleans or a designated representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0372 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 about this proposed rulemaking, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2231, email Benjamin.P.Morgan@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector New Orleans
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile Marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard Captain of the Port Sector New Orleans (COTP) is establishing a permanent safety zone on the Lower Mississippi River in order to better provide for the safety of life on these navigable waters during firework displays. The COTP has determined that a large and increasing volume of the firework displays occurring within Sector New Orleans' area of responsibility take place at locations between mile markers (MMs) 94 and 97 above Head of Passes on the Lower Mississippi River. Many of these events recur annually and are listed in Table 5 of 33 CFR 165.801 titled Sector New Orleans Annual and Recurring Safety Zones. However, a substantial and increasing number of these firework displays are one-time events associated with conventions, weddings, festivals, etc. By creating a permanent safety zone that can be enforced through a notice of enforcement, the COTP can more efficiently provide for the safety of life on these navigable waters. Therefore, on June 18, 2018, the Coast Guard published a

notice of proposed rulemaking (NPRM) titled Safety Zone; Lower Mississippi River, Mile Markers 94 to 97 Above Head of Passes, New Orleans, LA (83 FR 28175). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display safety zone. During the comment period that ended on July 18, 2018, we received two comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that a permanent safety zone that can be enforced as necessary for fireworks displays will better allow the COTP to provide for the safety of life. A large and increasing number of marine events has been occurring on the Lower Mississippi River, with the bulk of the events occurring within the same three-mile stretch of river. This rule allows for more timely and efficient responses to these requests and will also greatly reduce the administrative burden the COTP encounters with establishing individual safety zones for these various events. The purpose of this rulemaking is to ensure the safety of life on these navigable waters within this three-mile segment of the Lower Mississippi River before, during, and after firework displays. Potential hazards associated with firework displays include the accidental discharge of fireworks, dangerous projectiles, and falling embers and other debris.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published on June 18, 2018. One comment was unrelated to the rule. The second comment requested that the regulatory text include geographic coordinates in degrees-minutes-seconds with an associated horizontal datum in order to accurately depict the safety zone boundaries on

NOAA nautical charts. The Coast Guard agrees that the requested information would be helpful for NOAA and the public to identify the boundaries of the zone. The regulatory text of this final rule has been updated to include this information.

This rule establishes a permanent safety zone between mile marker (MM) 94 (29°57'32"N, 90°03'05"W) and MM 97 (29°55'19"N, 90°04'00"W), NAD83 datum, on the Lower Mississippi River, above Head of Passes. While this zone encompasses a three-mile section of the waterway, the COTP will limit the enforcement of the zone only to the areas necessary for the protection of life on these navigable waters before, during, and after firework displays. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. Persons and vessels requiring entry into this proposed safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (504) 365-2200. Persons and vessels permitted to enter the safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

In accordance with 33 CFR §165.7, for each enforcement of the safety zone established under this proposed rule, the COTP will publish a notice of enforcement in the *Federal Register* as early as practicable. The COTP or a designated representative will inform the public of the enforcement area and period of this safety zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

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, duration, and location of the safety zone. While this zone would be permanent, it would only be enforced on an as needed basis to better regulate marine events in the area. This typically encompasses one-hour operations for a one-mile portion of the waterway.

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.

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.

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 and Commandant Instruction M16475.1D, 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 establishing a safety zone on the Lower Mississippi River, mile marker

(MM) 94 to MM 97. While this zone will be permanent, it will only be subject to enforcement on an as-needed basis. 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. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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

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: 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 § 165.845 above the center heading “Ninth Coast Guard District” to read as follows:

§ 165.845 Safety Zone; Lower Mississippi River, mile markers 94 to 97 above Head

of Passes, New Orleans, LA.

(a) Location. The following area is a safety zone: all navigable waters of the Lower Mississippi River, New Orleans, LA from mile marker (MM) 94 (29°57'32"N, 90°03'05"W) to MM 97 (29°55'19"N, 90°04'00"W), NAD83 datum, on the Lower Mississippi River, above Head of Passes.

(b) Enforcement period. The safety zone established by this section will be enforced only upon notice of the Captain of the Port Sector New Orleans (COTP). In accordance with 33 CFR §165.7, for each enforcement of a safety zone established under this section, the COTP will publish a notice of enforcement in the *Federal Register* as early as practicable. In addition, the COTP will also inform the public of the enforcement area and times of this section as indicated in 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 to all vessels and persons except vessels authorized by the COTP or designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans.

(2) Persons and vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (504) 365-2200.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement period of this safety zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: August 6, 2018

K. M. LUTTRELL,
Captain, U.S. Coast Guard,
Captain of the Port Sector New Orleans.
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