



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2015-0704

RIN 1625-AA00

Safety Zone; Upper Mississippi River MM 180.0 to 180.5; St.

Louis, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, surface to bottom, between mile 180.0 and 180.5. This temporary safety zone is necessary to protect persons and property from potential damage and safety hazards during Lumiere Place Fireworks displays.

During the periods of enforcement, no vessels may be located within the Coast Guard safety zone. Entry into this Coast Guard safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Upper Mississippi River or other designated representative.

DATES: This rule is effective from 9:30 p.m. to 10:30 p.m. on August 29, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2015-0704. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR S. M. Peterson, Chief of Prevention, U.S. Coast Guard; telephone (314)269-2332, e-mail Sean.M.Peterson@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final 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. This event was originally scheduled to occur between July 2 and 4, 2015. However, due to high water, the event was rescheduled. The Coast Guard did not receive notice of the new event date until July 17, 2015 and could not complete the full notice and comment process prior to the date of the event. However, due to the potential hazards associated with fireworks displays, a safety zone is required to protect persons and property on the waterway during the displays. Completing the notice and comment period is impracticable because it would unnecessarily delay this rule and the immediate safety measures it provides. Additionally, delaying the effective date for this safety zone would be contrary to public interest.

For the same reasons, 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. Providing a full 30 days notice would be impracticable and would unnecessarily delay the effective date of this rule. Delaying the effective date would also be contrary to public interest since immediate action is necessary to protect persons and property from potential hazards associated with fireworks displays over or

on the Upper Mississippi River.

#### B. Basis and Purpose

A fireworks display is scheduled for August 29, 2015. This display will feature fireworks being launched from a barge located in the navigable channel between miles 180.0 and 180.5 on the Upper Mississippi River in the St. Louis Harbor. The Coast Guard determined that a safety zone is necessary to keep persons and property clear of any potential hazards associated with the launching of fireworks on or over the waterway.

The legal basis and authorities for this rule are found in 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, which collectively authorize the Coast Guard to establish and define safety zones.

The purpose of the rule is to establish the necessary temporary safety zone to provide protection for persons and property, including spectators, commercial and recreational vessels, and others that may be in the area during the noticed fireworks display times from the hazards associated with the fireworks display on and over the waterway.

#### C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone from 09:30 p.m. to 10:30 p.m. on August 29, 2015, for the Lumiere Place fireworks display. The fireworks will be launched from a barge located within the navigational channel and the safety zone

will include all waters between Upper Mississippi River miles 180.0 and 180.5. The Coast Guard will enforce the temporary safety zone and may be assisted by other federal, state and local agencies and the Coast Guard Auxiliary. During the periods of enforcement, no vessels may transit into, through, or remain within this Coast Guard safety zone. Deviation from this safety zone may be requested by contacting the COTP Upper Mississippi River or other designated representative. Deviations will be considered on a case-by-case basis.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This temporary final rule establishes a safety zone that will be enforced for a limited time period. During the enforcement period, vessels are prohibited from entering into or remaining within the safety zone unless

specifically authorized by the COTP Upper Mississippi River or other designated representative. Based on the location, limited safety zone size, and short duration of the enforcement period, this rule does not pose a significant regulatory impact.

Additionally, notice of this safety zone or any changes in the planned schedule will be made via Broadcast Notice to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate. Deviation from this rule may be requested from the COTP Sector Upper Mississippi River and will be considered on a case-by-case basis.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during 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.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for only one hour. Although the safety zone would apply to the entire width of the river, traffic may be allowed to pass through the zone with the permission of the COTP. Before the activation of the zone, we would issue maritime advisories widely available to users of the river.

### 3. Assistance for 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, above.

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.

### 4. 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).

### 5. Federalism

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 determined that this rule does not have implications for federalism.

#### 6. 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.

#### 7. 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.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally

Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we

did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 to protect persons and property from potential hazards associated with the scheduled Lumiere Place Fireworks display taking place on or over the Upper Mississippi River. This rule 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.

#### 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. Temporary § 165.T08-0540 is added to read as follows:  
§ 165.T08-0540 Safety Zone; Upper Mississippi River between MM 180.0 and 180.5; St. Louis, MN.

(a) Location. The following area is a safety zone: all waters of the Upper Mississippi River between MM 180.0 and 180.5, St. Louis, MO, extending the entire width of the river.

(b) Effective dates. This rule is effective from 9:30 p.m. to 10:30 p.m. on August 29, 2015.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, movement within, or departure from this zone is prohibited unless authorized by the COTP Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into, departure from, or movement within a regulated area must request permission from the COTP Upper Mississippi River or a designated representative. They may be contacted on VHF-FM Channel 16, or through Coast Guard Sector Upper Mississippi River at (314) 269-2332.

(3) All persons and vessels shall comply with the instruction of the COTP Upper Mississippi River and designated on-scene personnel.

(d) Informational Broadcasts. The COTP Upper Mississippi River or a designated representative will inform the public through Broadcast Notice to Mariners, Local Notice to Mariners, and/or Safety Marine Information Broadcasts as appropriate of the enforcement period for each safety zone as well as any changes in the planned and published dates and times of enforcement.

Dated: August 13, 2015.

M. L. MALLOY,

Captain, U.S. Coast Guard,

Captain of the Port Sector Upper Mississippi River.

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