



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0354]

RIN 1625-AA00

Safety Zones; Upper Mississippi River Between Mile 179.2 and 180.5, St. Louis, MO and
Between Mile 839.5 and 840, St. Paul, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing four temporary safety zones for two areas of the Upper Mississippi River (UMR); three safety zones between UMR mile 179.2 and 180.5, and one between UMR mile 839.5 to 840. These temporary safety zones are necessary to protect persons and property from potential damage and safety hazards during fireworks displays on or over the navigable waterway. During the period of enforcement, entry into these safety zones 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 7:45 p.m. on June 2, 2016 until 10:30 p.m. on July 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0354 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 on this rule, call or email LCDR Sean Peterson, Chief of Prevention, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314-269-2332, email Sean.M.Peterson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. 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 finds good cause 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 these rules because fireworks displays on or over the navigable waterway poses safety concerns for waterway users. In this case, the Coast Guard was not notified of the fireworks displays until April 26, 2016 and May 16, 2016. After full review of the details for the planned and locally advertised displays, the Coast Guard determined action is needed to protect people and property from the safety hazards associated with the fireworks displays on the UMR near St. Louis, MO and St. Paul, MN. It is impracticable to publish an NPRM because we must establish these safety zones by June 2 and 11, and July 3 and 4, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making the rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of the rule is contrary to the public interest as it would delay the effectiveness of the temporary safety zones needed to respond to potential related safety hazards until after the planned fireworks displays. This rule does provide approximately 7 to 30 days notice for the four safety zones related to the four planned fireworks displays on the UMR near St. Louis, MO and St. Paul, MN.

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 potential hazards associated with fireworks displays taking place on or over these sections of navigable waterway will be a safety concern for anyone within the areas that are designated as the safety zones. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zones during the fireworks displays.

IV. Discussion of the Rule

This rule establishes four safety zones as follows:

- (1) from 7:45 p.m. until 9 p.m. on June 2, 2016, for the Ribbon Cutting Celebration for the Completion of the Riverfront Component for the Great Rivers Greenway barge based fireworks display, all waters of the UMR from mile 179.2 to 180;
- (2) from 9 p.m. until 11 p.m. on June 11, 2016, for the St. Louis Brewers Guild barge based fireworks display, all waters of the UMR from mile 179.2 to 180.5;
- (3) from 8:30 p.m. until 11 p.m. on July 3, 2016, for the Lumiere Place July 3, 2016 barge based fireworks display, all waters of the UMR from mile 180 to 180.5; and

(4) from 10 p.m. until 10:30 p.m. on July 4, 2016, for the City of St. Paul July 4th Celebration, all waters of the UMR from mile 839.5 to 840.

Exact times of the closures and any changes to the planned scheduled will be communicated to mariners using Broadcast Notices to Mariners and Local Notices to Mariners. The safety zones are intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks displays. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. These rules have not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, they have not been reviewed by the Office of Management and Budget.

This temporary final rule establishes four safety zones, each of which will be enforced for a limited time period. During the enforcement periods, vessels are prohibited from entering into or remaining within the safety zones unless specifically authorized by the COTP or other designated representative. Based on the locations, limited safety zone sizes, and short duration of the enforcement periods, these rules do not pose a significant regulatory impact. Additionally,

notice of the safety zones or any changes in the planned schedules will be made via Broadcast Notices to Mariners and Local Notices to Mariners. Deviation from these rules may be requested from the COTP or other designated representative and will be considered on a case-by-case basis.

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.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section V.A. above, these rules will not have a significant economic impact on any vessel owner or operator.

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 these rules. If the rules 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 the actions are one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones, each lasting less than three hours that will limit access to specific areas on the UMR. These safety zones are 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

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements,

Security measures, and 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.T08-0354 to read as follows:

§ 165.T08-0354 Safety zones; Upper Mississippi River between mile 179.2 and 180.5; St. Louis, MO and between mile 839.5 and 840, St. Paul, MN.

(a) Safety zones. The following areas are safety zones:

(1) Great Rivers Greenway fireworks display, St. Louis, MO:

(i) Location. All waters of the Upper Mississippi River from mile 179.2 to 180.

(ii) Enforcement period. This safety zone will be enforced from 7:45 p.m. until 9 p.m. on June 2, 2016;

(2) St. Louis Brewers Guild fireworks display, St. Louis, MO:

(i) Location. All waters of the Upper Mississippi River from mile 179.2 to 180.5.

(ii) Enforcement period. This safety zone will be enforced from 9 p.m. until 11 p.m. on June 11, 2016;

(3) Lumiere Place fireworks display, St. Louis, MO:

(i) Location. All waters of the Upper Mississippi River from mile 180 to 180.5.

(ii) Enforcement period. This safety zone will be enforced from 8:30 p.m. until 11 p.m. on July 3, 2016; and

(4) City of St. Paul July 4th Celebration, St. Paul MN.

(i) Location. All waters of the Upper Mississippi River from mile 839.5 to 840.

(ii) Enforcement period. This safety zone will be enforced from 10 p.m. until 10:30 p.m. on July 4, 2016.

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Upper Mississippi River in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zones described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or designated representative via 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 and designated on-scene personnel.

(d) Information Broadcasts. The COTP or a designated representative will inform the

public through Broadcast Notices to Mariners, Local Notices 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: May 19, 2016

M. L. MALLOY

CAPTAIN, U.S. Coast Guard,

Captain of the Port Upper Mississippi River.

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