



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0731]

RIN 1625-AA00

Safety Zone; Mississippi River, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters on the Mississippi River between mile marker (MM) 96.0 and MM 96.5. This action is necessary to provide for the safety of life on these navigable waters near New Orleans, LA, during a fireworks display. Entry of vessels or persons into this safety zone is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative.

DATES: This rule is effective from 7:50 p.m. to 8:50 p.m. on October 28, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0731 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 (LCDR) Howard Vacco,

Sector New Orleans, U.S. Coast Guard; at (504) 365-2281, email

Howard.K.Vacco@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>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard preceded this final rule with a Notice of Proposed Rulemaking (NPRM). The NPRM was published in the Federal Register on August 23, 2017, (82 FR 39972). We invited comments on our proposed regulatory action related to work on power lines extending over the Mississippi River in New Orleans, LA. The NPRM listed dates and times of enforcement of the safety zone. During the comment period that ended September 7, 2017, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector New Orleans (COTP) has determined that potential hazards associated with the fireworks display from 7:50 p.m. to 8:50 p.m. on October 28, 2017 will present a safety concern for all navigable waters on the Mississippi River from mile marker (MM) 96.0 and MM 96.5. The purpose of this rule is to ensure safety of life and vessels on the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

During the comment period, one comment was received. The commenter made a general statement that he or she was against “safe spaces”. The commenter did not indicate if he or she was against the proposed safety zone or the reasons for it. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The rule establishes a safety zone from 7:50 p.m. through 8:50 p.m. on October 28, 2017. The safety zone would cover all navigable waters between MM 96.0 and 96.5 on the Mississippi River in New Orleans, LA. The duration of the zone is intended to ensure the safety of life and vessels on these navigable waters before, during, and after the scheduled fireworks display. Entry into this safety zone is prohibited 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 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, location, duration, and time-of-year of the safety zone. This safety zone will be enforced for a period of one hour on one day on one half of one mile of navigable waters. Vessel traffic will be able to safely navigate through the affected area before and after the scheduled event. Entry into the safety zones established through this rulemaking may be requested from the COTP or a designated representative and will be considered on a case-by-case.

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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule 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 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 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 a safety zone lasting one hour on one day extending one half of one mile that will prohibit entry on all navigable waters of the Mississippi River from mile marker (MM) 96.0 and MM 96.5. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. 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

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.T08-0731 to read as follows:

§ 165.T08-0731 Safety Zone; Mississippi River, New Orleans, LA.

(a) Location. The following area is a safety zone: All navigable waters of the Mississippi River between mile marker (MM) 96.0 and MM 96.5.

(b) Effective period. This section is effective from 7:50 p.m. through 8:50 p.m. on October 28, 2017.

(c) Definitions. As used in this section, a *designated representative* is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to Sector New Orleans, U.S. Coast Guard.

(d) 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 Sector New Orleans (COTP) or designated representative.

(2) 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.

(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.

(e) Information broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

Dated: September 15, 2017

WAYNE R. ARGUIN,
Captain, U.S. Coast Guard,
Captain of the Port New Orleans

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