



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1077]

RIN 1625-AA00

Safety Zone; Mississippi River, Baton Rouge, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters from mile marker (MM) 229.5 to MM 230.5 Above Head of Passes on the Lower Mississippi River. This temporary safety zone is necessary to provide for the safety of life on these navigable waters near downtown, Baton Rouge, LA, during a fireworks display on December 31, 2017. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector New Orleans or a designated representative.

**DATES:** This rule is effective from 11:30 p.m. on December 31, 2017, through 1 a.m. on January 1, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-1077 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 Lieutenant Raymond Wagner, Marine Safety Unit Baton Rouge, U.S. Coast Guard; telephone 225-298-5400 ext. 230, email Raymond.W.Wagner@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

AHP	Above Head of Passes
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 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 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 because it is impractical and contrary to public interest. We must establish this safety zone by December 31, 2017. It is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It is also contrary to public interest as it would delay the safety measures

necessary to protect life and property from the possible hazards associated with the display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the *Federal Register*. Waiting a full 30 days after publication in the *Federal Register* is contrary to the public interest as that would delay the effectiveness of the safety zone until after the planned fireworks event. Immediate action is needed to protect vessels and mariners from the safety hazards associated with an aerial fireworks display over the waterway. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of the enforcement periods via broadcast notices to mariners.

### **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 on December 31, 2017 will be a safety concern for any vessels or persons in the vicinity of the launch area between mile marker (MM) 229.5 and MM 230.5 Above Head of Passes (AHP) on the Lower Mississippi River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

### **IV. Discussion of the Rule**

The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River for 1 hour and 30 minutes on the night of December 31, 2017. The safety zone will include all navigable waters of the Lower Mississippi River in Baton Rouge, LA, from mile marker (MM) 229.5 to MM 230.5, AHP. Entry into this zone is prohibited unless

permission has been granted by the COTP or a designated representative. Public notifications will be made to the local maritime community prior to the event through broadcast notice to mariners. Mariners and other members of the public may also contact the COTP to inquire about the safety zone by telephone at (225) 298-5400 ext. 230.

## **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 temporary safety zone will only restrict navigation on the Lower Mississippi River on an area of less than 2 miles and for 1 hour and 30 minutes on the night of December 31, 2017. Due to the limited scope and short duration of the safety zone, the impacts on routine navigation are expected to be minimal.

### **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 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 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 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 for all waters of the Lower Mississippi River from MM 229.5 to MM 230.5 AHP. 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—SPECIFIC 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.T08-1077 to read as follows:

§ 165.T08-1077 Safety Zone; Fireworks Display Lower Mississippi River mile marker (MM) 229.5 to MM 230.5, Baton Rouge, LA.

(a) Location. The following area is a safety zone: All navigable waters of the Lower Mississippi River from mile marker 229.5 to mile marker 230.5 Above Head of Passes, Baton Rouge, LA.

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

(2) To seek permission to enter, vessels must request permission from the COTP or a designated representative. The designated representative can be contacted on VHF-FM Channel 16 or 67, or through the Marine Safety Unit Baton Rouge Officer of the Day at 225-281-4789.

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

(c) Enforcement period. This section will be enforced from 11:30 p.m. on December 31, 2017, through 1 a.m. on January 1, 2018.

Dated: December 22, 2017

K.M. LUTTRELL,

Captain, U.S. Coast Guard,

Acting Captain of the Port Sector New Orleans.

[FR Doc. 2017-28145 Filed: 12/28/2017 8:45 am; Publication Date: 12/29/2017]