



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0744]

RIN 1625-AA00

Safety Zone; Lower Mississippi River, Mile Markers 230.4 to 215, 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 of the Lower Mississippi River from mile marker (MM) 230.4 to MM 215, above Head of Passes. This safety zone is necessary to protect persons, vessels, and the marine environment from potential safety hazards associated with the Big River Regional 2018 Paddle Board Race. Entry of persons or vessels into this safety 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 7:30 a.m. through noon on September 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0744 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 Justin Maio, Marine Safety Unit Baton Rouge, U.S. Coast Guard; telephone 225-298-5400, ext. 230, email Justin.P.Maio@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 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)(3)(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 impracticable. We must establish this safety zone by September 1, 2018, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the paddle board race and compromise public safety.

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*.

Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during the event because immediate action is necessary to respond to the potential safety hazards associated with the paddle board race.

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 paddle board race occurring over a fifteen and half mile stretch of the Lower Mississippi River will be a safety concern. The purpose of this rule is to ensure the safety of life and vessels on the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 7:30 a.m. through noon on September 1, 2018. The safety zone will cover all navigable waters of the Lower Mississippi River from MM 230.4 to MM 215, above Head of Passes. The duration of the zone is intended to ensure the safety of persons, vessels, and the marine environment on these navigable waters before, during, and after the scheduled paddle board race.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". 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 through USCG Marine Safety Unit Baton Rouge at 225-281-4789. All persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices 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 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the

cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action,” under section 3(f) of Executive Order 12866.

Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will prohibit entry on a fifteen and a half miles stretch of the Lower Mississippi River for four and a half hours on one morning. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

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 temporary 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 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 a safety zone that will prohibit entry on a fifteen and a half mile stretch of the Lower Mississippi River for four and a half hours on one morning. 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.T08-0744 to read as follows:

§ 165.T08-0744 Safety Zone; Lower Mississippi River, Mile Markers 230.4 to 215,

Baton Rouge, LA.

(a) Location. The following area is a safety zone: All navigable waters of the Lower Mississippi River from mile markers (MM) 230.4 to MM 215 above Head of Passes, Baton Rouge, LA.

(b) Effective period. This section is effective from 07:30 a.m. through noon on September 1, 2018.

(c) Regulations. (1) Under the general safety zone regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(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, or through the Marine Safety Unit Baton Rouge Officer of the Day at 225-281-4789.

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

(d) Informational broadcasts. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: August 17, 2018.

Kristi M. Luttrell,

Captain, U.S. Coast Guard,

Captain of the Port Sector New Orleans.

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