



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0123]

RIN 1625-AA00

Safety Zone; Arkansas River, Mile Marker 126.6, Little Rock, AR

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Arkansas River (AR), between Mile Marker (MM) 126 and MM 127. The safety zone is needed to protect persons, property, and the marine environment from the potential safety hazards associated with bridge construction in the vicinity of Little Rock, AR. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: Effective date: This temporary interim rule is effective from March 10, 2021 until July 12, 2021.

Comments due date: Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0123 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this temporary interim rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary interim rule, call or e-mail MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901-521-4813, e-mail Lindsey.M.Swindle@uscg.mil.

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I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. Your comment can help us amend this regulation so that it provides a better solution to the problem we seek to address. We may issue a temporary final rule or other appropriate document in response to your comments.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If you cannot submit your material by using <https://www.regulations.gov>, call or e-mail the person in the **FOR FURTHER INFORMATION CONTACT** section of this temporary interim rule for alternate instructions. Documents mentioned in this temporary interim rule as being available in

the docket, and all public comments, will be available in our online docket at <https://www.regulations.gov>, and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the temporary interim rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you visit the online docket and sign up for e-mail alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We do not plan to hold a public meeting but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Table of Abbreviations

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

III. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim 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 temporary interim rule because it is impracticable. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objections since immediate action is needed to protect persons and property from the potential safety hazards associated with the bridge construction. Such hazards may include falling debris from the construction project.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment. Therefore, a 30-day notice is impracticable. Delaying the effective date of this temporary interim rule would be contrary to the public interest because immediate action is needed to protect persons and vessels from the potential safety hazards associated with the bridge construction in the vicinity of Little Rock, AR.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

IV. Legal Authority and Need for the Temporary Interim Rule

The Coast Guard is issuing this temporary interim rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Lower Mississippi River (COTP) has determined that potential hazards associated with the bridge construction, would be a safety concern for all persons and vessels on the Arkansas River between MM 126 and MM 127 in the vicinity of Little Rock, AR. This temporary interim rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the AR within the safety zone while bridge construction is being conducted.

V. Discussion of the Temporary Interim Rule

This temporary interim rule establishes a temporary safety zone from March 10, 2021 through July 12, 2021. The safety zone will cover all navigable waters of the AR between MM 126 and MM 127 in the vicinity of Little Rock, AR. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during the bridge construction.

Entry of persons or vessels into this safety zone is prohibited unless authorized by 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 Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 901-521-4822. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or 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.

VI. Regulatory Analyses

We developed this temporary interim 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. This temporary interim rule has not been

designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this temporary interim rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. This temporary safety zone will temporarily restrict navigation on the AR between MM 126 and MM 127 in the vicinity of Little Rock, AR., from March 10, 2021 through July 12, 2021. Moreover, The Coast Guard will issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate. The temporary interim 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 temporary interim 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 temporary interim 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 temporary interim rule. If the temporary interim rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its

provisions or options for compliance, please call or email 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 temporary interim rule or any policy or action of the Coast Guard.

C. Collection of Information

This temporary interim 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 temporary interim 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 temporary interim 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 temporary interim 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.

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 temporary interim rule will not result in such an expenditure, we do discuss the effects of this temporary interim rule elsewhere in this preamble.

F. Environment

We have analyzed this temporary interim rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 temporary interim rule involves a temporary safety zone on the AR between MM 126 and MM 127 in the vicinity of Little Rock, AR that will prohibit entry into this zone. The temporary safety zone will only be enforced while operations preclude the safe navigation of the established channel. 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. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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: 46 U.S.C. 70034, 70051; 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.T08-0123 to read as follows:

§ 165.T08-0123 Safety Zone; Arkansas River, Mile Marker 126.6, Little Rock, AR

(a) **Location.** The following area is a safety zone: All navigable waters of the Arkansas River between Mile Marker (MM) 126 and MM 127 in the vicinity of Little Rock, AR.

(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 Lower Mississippi River (COTP) or the COTP's 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 Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF-FM channel 16 or by telephone at 901-521-4822. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's

designated representative.

(c) *Effective period.* This section is effective from March 10, 2021 until July 12, 2021.

(d) *Information 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, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: March 4, 2021

R. S. Rhodes

Captain, U.S. Coast Guard,

Captain of the Port Sector Lower Mississippi River

[FR Doc. 2021-04949 Filed: 3/9/2021 8:45 am; Publication Date: 3/10/2021]