



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2023-0632]

RIN 1625-AA00

### Safety Zone; Bay St. Louis, MS

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters at the opening of Bay St. Louis, extending the entire width of the channel, approximately ½ mile south of the Hwy 90 Bridge. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the 2023 Swim Across the Bay. Entry of vessels or persons into this zone is prohibited unless specifically authorized the Captain of the Port Sector Mobile (COTP) or a designated representative.

**DATES:** This rule is effective from 7 a.m. through 10 a.m. on September 17, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0632 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Lawrence J. Schad, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251-441-5678, e-mail [sectormobilewaterways@uscg.mil](mailto:sectormobilewaterways@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
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 final 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 and contrary to the public interest. It is impracticable to publish an NPRM because we must establish this safety zone by September 17<sup>th</sup>, 2023, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 the effective date of this rule is contrary to public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with the 2023 Swim Across the Bay. Immediate action is needed to protect vessels and mariners from the safety hazards associated with 2023 Swim Across the Bay.

## **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 Mobile (COTP) has determined that potential hazards associated with the 2023 Swim Across the Bay on September 17<sup>th</sup>, 2023, will be a safety concern for any vessels or persons at the opening of Bay St. Louis, approximately ½ mile south of the Hwy 90 Bridge in Bay St. Louis, MS. This rule is needed to protect the public, mariners, and vessels from the

potential hazards associated with the 2023 Swim Across the Bay.

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

The Coast Guard is establishing a temporary safety zone, effective from 7 a.m. to 10 a.m. on September 17, 2023. The safety zone encompasses the opening of Bay St. Louis, extending the entire width of the channel, approximately ½ mile south of the Hwy 90 Bridge in Bay St. Louis, MS. The location and duration of this safety zone is intended to protect persons and vessels during the 2023 Swim Across the Bay that will take place on this navigable waterway. No person or vessel will be permitted to enter or transit within the safety zone, unless specifically authorized by the COTP or a designated representative. Public notifications will be made to the local maritime community through Broadcast Notice to Mariners (BNM). To enter the zone, mariners and other members of the public must also contact the COTP or designated representative to ask permission to enter the safety zone on VHF-FM channels 15 and 16 or by telephone at 251-382-8653. If permission is granted, all persons and vessels must comply with the instructions of the COTP or 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. This rule has not been designated a “significant regulatory action, under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this 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 only restrict navigation for 3 hours near the opening of Bay St. Louis, approximately ½ mile south of the Hwy. 90 Bridge in Bay St. Louis, MS, extending the entire width of the channel. Moreover, the Coast Guard will issue a Local Notice to Mariners (LNM) about the zone, and the rule would allow 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 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 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 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.

*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, 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 rule involves a safety zone that will prohibit mariners and the public near the opening of Bay St. Louis, extending the entire width of the channel approximately ½ mile south of the Hwy 90 Bridge in Bay St. Louis, MS. 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 where indicated under 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, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add§165.T08-0632 to read as follows:

**§ 165.T08-0632 Safety Zone; Bay St. Louis, MS.**

(a) *Location.* The following area is a safety zone: the opening of Bay St. Louis, extending the entire width of the channel, approximately ½ mile south of the Hwy 90 Bridge in Bay St. Louis, MS.

(b) *Enforcement period.* This section will be enforced on September 17, 2023 from 7 a.m. through 10 a.m.

(c) *Regulations.* (1) The general regulations contained in § 165.23 as well as the regulations in this section apply to the regulated area.

(2) Entry into the zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

(3) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channels 15 and 16 or by telephone at 251-441-5678.

(4) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone.

Dated: September 11, 2023.

U. S. Mullins,  
Captain, U. S. Coast Guard,  
Captain of the Port Sector Mobile.