

that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon

counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 936**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 2002.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR part 936 is amended as follows:

**PART 936—OKLAHOMA**

1. The authority citation for part 936 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

**§ 936.15 Approval of Oklahoma regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *		
November 1, 2001	January 17, 2003	Sections 460.20-3-5; 20-5-1; 20-5-2; 20-5-3; 20-5-4(a)(7) through (d); 20-5-6; 20-5-7(a) and (b); 20-5-8; 20-5-9(b); 20-5-10(a), (a)(2), (b)(1) through (c)(4); 20-5-13; 20-15-4; 20-15-6(b)(4), (b)(5), and (c)(13); 20-33-12; 20-43-46(b)(6) and (c)(2) through (c)(3)(B); 20-45-46(b)(6) and (c)(2) through (c)(3)(B).

[FR Doc. 03-977 Filed 1-16-03; 8:45 am]  
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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[COTP New Orleans-02-022]

RIN 2115-AA97

**Safety Zone; Lower Mississippi River, Above Head of Passes, Mile Marker 88.1 to 90.4, New Orleans, LA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is amending the temporary final rule for the safety zone established for the transit of the cruise ship (C/S) CONQUEST beneath the Entergy Corporation power cable at mile marker 89.2 Lower Mississippi River (LMR), published November 22, 2002. These amendments reflect knowledge gained from several transits of the C/S CONQUEST through this area and generally reduce the size and length of time of the zone. We are also extending the effective period of this established rule to June 8, 2003. This temporary rule will continue to prohibit entry into this zone unless specifically authorized by the Captain of the Port, New Orleans or designated representative.

**DATES:** The amendments to § 165.T08-122 are effective on December 13, 2002. Section 165.T08-122, added at 67 FR 70315, November 22, 2002 effective from 4:30 a.m. November 12, 2002, through 8 p.m. March 2, 2003 is extended and will remain in effect through 11 p.m. on June 8, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans-02-022] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, Louisiana, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade (LTJG) Matthew Dooris, Marine Safety Office New Orleans, at (504) 589-4251.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The original temporary final rule was immediately required to respond to safety concerns associated with the transit of the C/S CONQUEST beneath the power cables at mile marker 89.2

LMR. The Coast Guard has continued to assess the situation after each transit of the vessel and has determined that the size of the zone and length of time the zone is enforced can be reduced, lessening the burden on the public. In addition, the assessments have revealed the need to have a small portion of the New Orleans General Anchorage clear of all vessels while the vessel is transiting beneath the power cables. This practice was initiated by the local pilots, and the Captain of the Port has decided to incorporate it in this rule. Because it is already a customary practice, and it is only applicable one day a week for a short period of time, this change should not create any additional burden for the public. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to continue to protect vessels and mariners from the hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST under the power cable crossing.

**Background and Purpose**

On November 12, 2002 (67 FR 70313), the Captain of the Port, New Orleans established a temporary safety zone from mile 87.2 to 91.2 LMR extending the entire width of the river for the transit of the C/S CONQUEST beneath the Entergy Corporation power cable located at mile 89.2 LMR. The C/S CONQUEST is home ported in New Orleans at the Julia Street Wharf, mile

marker 95.3 LMR and has an air draft of 208 feet. The lowest cable at Entergy Corporation's Chalmette power cable crossing is 212.6 feet North American Vertical Datum (NAVD) at the center of the Lower Mississippi River and increases in height to a maximum of 366.4 feet NAVD on the East bank and a maximum of 361.1 feet NAVD on the West bank. As the C/S CONQUEST needs an air gap of 14 feet between it and the cable to prevent electrical arcing, the vessel must maneuver within about 400 to 600 feet of the East bank or within about 400 to 700 feet of the West bank to safely transit under Entergy Corporation's Chalmette power cable crossing. Vessels transiting this area may restrict the maneuverability of the C/S CONQUEST through those safe passage lanes and possibly result in harm to life or damage to the cruise ship, the power cable, or nearby vessels.

The Coast Guard has continued to assess the safety of the C/S CONQUEST's transit after each visit. The Captain of the Port, New Orleans has had several meetings with the owner of the vessel, Carnival Cruise Lines, as well as Entergy, pilot associations, owner's of facilities impacted by the safety zone, the New Orleans Port Commission, and other representatives of the local maritime industry to evaluate the safe transit of the vessel as well as the impact of the safety zone on other traffic. All interested parties have worked to find short-term solutions to the problems posed by the crossing including de-energizing the lowest cables just prior to the transit. A long-term solution is anticipated to be complete within 18 months.

Based on continued evaluation of the transits, the Captain of the Port, New Orleans is amending the zone to reduce the size from 4 miles in length to 2.3 miles. The safety zone will now begin at mile marker 88.1, which is the location of the lower end of the Algiers Lock fore bay, and end at mile marker 90.4, which is the location of the Chalmette Slip and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock. The amount of time the zone is enforced is also being reduced from 1 hour prior to the C/S CONQUEST reaching the cable crossing to 30 minutes prior. The safety zone will now be enforced from approximately 3:15 a.m. until 3:45 a.m., which is one half hour before the C/S CONQUEST is scheduled to arrive at the cable crossing on its upriver transit until it safely transits underneath the crossing, and from approximately 6 p.m. until 6:30 p.m., which is one half hour before the C/S CONQUEST is scheduled to arrive

at the cable crossing on its down bound transit, until it safely transits underneath the crossing, every Sunday between December 15, 2002 and June 8, 2003. These periods of enforcement are based on the advance cruise schedule for the C/S CONQUEST and are subject to change. Mariners will be advised of changes to the cruise schedule and periods of safety zone enforcement via broadcast notice to mariners.

The rule is also being amended to prohibit vessels from anchoring in the New Orleans Emergency Anchorage or the New Orleans General Anchorage below mile marker 90.4, which is the location of Chalmette Slip and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock. These vessels could restrict the maneuverability of the C/S CONQUEST through safe passage lanes and possibly result in harm to life or damage to the cruise ship, the power cable, or nearby vessels. Vessels anchored within the New Orleans Emergency Anchorage are already required by 33 CFR § 110.195 (a)(16) to obtain permission from the Captain of Port, New Orleans prior to anchoring. The New Orleans General Anchorage is from mile 90.1 to 90.9 LMR with only 0.3 miles of the anchorage affected by this amendment. This prohibition is effective two hours prior to the arrival and departure of the C/S CONQUEST until it safely passes under the crossing.

Except as described in this rule, all vessels are prohibited from entering, anchoring or transiting within the zone during the announced enforcement periods unless authorized by the Captain of the Port New Orleans or his designated representative, the Vessel Traffic Center (VTC). Vessels may request authorization to transit through the safety zone by contacting the VTC. Moored vessels are permitted to remain within the safety zone.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard has met with members of local maritime

industry including Carnival Cruise Lines, Entergy, the New Orleans Port Commission, pilots association, owners of water front facilities located within or adjacent to the zone as well as agents and shipping companies to discuss safety concerns associated with the transit and measures to reduce the impact of the safety zone on the local maritime community. The original rule and these amendments limit the economic impact of the rule.

This rule will only affect maritime traffic for short periods of time. The impact on routine navigation is expected to be minimal as the zone will only be in effect for one half hour, twice each week. Limiting the zone to one half hour ensures that the zone is not enacted before the C/S CONQUEST departs on its downriver voyage. This will help to ensure that a delay in the CONQUEST's departure does not impact the maritime community. Furthermore, the VTC can permit movements within the zone that do not impact the passage of the C/S CONQUEST, further limiting the impact of the zone.

Prior to this amendment, the pilot associations were already limiting anchorage in the lower portion of the New Orleans General Anchorage to vessels that were expected to be underway prior to C/S CONQUEST's transit through this area. Therefore, this amendment should not have a negative impact on vessels desiring to use this anchorage. Vessels desiring to anchor or remain at anchor within this portion of the anchorage may still request permission from the Captain of the Port, New Orleans through the VTC to do so.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or remain at anchor within the safety zone from mile marker 88.1, to mile marker 90.4 LMR, while the C/S CONQUEST is transiting this area inbound and outbound. This

safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only one half hour, twice each week. Limiting the zone to one half hour ensures that the zone is not enacted before the C/S CONQUEST departs on its downriver voyage. This will ensure that a delay in the CONQUEST's departure does not impact the maritime community. Furthermore, the VTC may permit movements within the zone that do not impact the passage of the C/S CONQUEST, further limiting the impact of the zone.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Matthew Dooris, Marine Safety Office New Orleans, at (504) 589-4251.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

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).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 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 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.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have considered the environmental impact of this rule and

concluded that under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available for inspection or copying where indicated under ADDRESSES.

#### 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(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T08-122 to read as follows:

#### § 165.T08-122 Safety Zone; Lower Mississippi River, Mile Marker 88.1 to 90.4, Above Head of Passes, New Orleans, LA.

(a) *Location.* The following area is a safety zone: the entire width of the Lower Mississippi River (LMR), above Head of Passes, beginning at mile marker 88.1, which is the location of the lower end of the Algiers Lock fore bay, and ending at mile marker 90.4, which is the location of the Chalmette Slip and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock.

(b) *Effective date.* This section is effective from 4:30 a.m. on December 13, 2002 until 11 p.m. on June 8, 2003.

(c) *Periods of enforcement.* This rule will be enforced from 3:15 a.m. until 3:45 a.m. and 6 p.m. to 6:30 p.m. every Sunday between December 15, 2002 and June 8, 2003. These periods of enforcement are based on the predicted cruise schedule for the C/S CONQUEST and are subject to change. The Captain of the Port, New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, except as described in this rule, entry into this zone is prohibited unless authorized by the Captain of the Port, New Orleans or designated

representative, the Vessel Traffic Center (VTC).

(2) The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(3) Vessels are prohibited from anchoring in the New Orleans Emergency Anchorage or the New Orleans General Anchorage below mile marker 90.4, which is the location of Chalmette Slip and 350 yards upriver of the Belle Chase Launch Service's West Bank Dock. This prohibition is effective two hours prior to the arrival and departure of the C/S CONQUEST until it safely passes under the crossing.

(4) Moored vessels are permitted to remain within the safety zone.

(5) Vessels requiring entry into or passage through the zone during the enforcement periods must request permission from the Captain of the Port, New Orleans or designated representative, the VTC. They may be contacted via VHF Channel 67 or by telephone at (504) 589-2780.

(6) All persons and vessels shall comply with the instruction of the Captain of the Port, New Orleans and designated representatives including the VTC and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: December 13, 2002.

**R.W. Branch,**

*Captain, U.S. Coast Guard, Captain of the Port, New Orleans.*

[FR Doc. 03-1009 Filed 1-16-03; 8:45 am]

**BILLING CODE 4910-15-P**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[PA037/072/184-4190a; FRL-7421-1]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Sulfur Dioxide Attainment Demonstration for the Warren County Nonattainment Area and Permit Emission Limitations for Two Individual Sources in Warren County**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP). This revision contains

enforceable operating permit emission limitations for the Reliant Warren Generating Station and the United Refining Company, and an air quality modeling demonstration that indicates that the allowable emission limits will provide for the attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>) in the Conewango Township, Pleasant Township, Glade Township, and the City of Warren nonattainment area. The modeling demonstration assumes new SO<sub>2</sub> limits for the Reliant Warren Generating Station and the United Refining Company. This SIP revision replaces all previously submitted SIP revisions for the SO<sub>2</sub> nonattainment areas in Warren County, Pennsylvania. The implementation plan was submitted by Pennsylvania to satisfy the requirements of the Clean Air Act (CAA) pertaining to nonattainment areas.

**DATES:** This rule is effective on March 18, 2003 without further notice, unless EPA receives adverse written comment by February 18, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Walter Wilkie, Deputy Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Denis Lohman, (215) 814-2192, or Ellen Wentworth, (215) 814-2034 or by e-mail at [lohman.denny@epa.gov](mailto:lohman.denny@epa.gov), or [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Conewango Township*

On March 3, 1978, (43 FR 8962) EPA designated Conewango Township, Warren County, Pennsylvania, as nonattainment for SO<sub>2</sub> as part of EPA Region III's initial SO<sub>2</sub> designations. EPA acted on the recommendation of the Commonwealth of Pennsylvania to designate this area as nonattainment for SO<sub>2</sub>. Upon designation, part D of the CAA was triggered for Conewango Township. Part D required Pennsylvania to submit to EPA for approval, a plan revision for achieving the SO<sub>2</sub> NAAQS as expeditiously as practicable. The basis of the recommendation was air quality dispersion modeling conducted in 1976. This modeling analysis was later found suspect because EPA determined that the study did not meet modeling guidelines and that meteorological data may have been suspect. On December 27, 1982, the Pennsylvania Department of Environmental Resources (PADER) submitted a request to have Conewango Township reclassified to "unclassifiable", but EPA rejected the request because the statutory attainment date (December 31, 1982) had passed by the time EPA received the request. A March 17, 1983, request to have the area redesignated to "attainment" was rejected by EPA because the request did not contain adequate modeling in support of the request.

After Penelec reported monitored exceedances of the SO<sub>2</sub> NAAQS, the EPA on February 24, 1984, notified PADER that it must submit a SIP revision for the area to address the NAAQS nonattainment. In accordance with EPA's request, PADER and Penelec entered into a Consent Order and Agreement (COA) on December 5, 1984. The COA required Penelec to conduct a new air quality and meteorological monitoring study to select a dispersion model to be used to set an allowable emission rate for the Warren plant. This COA was submitted to EPA as a SIP revision on December 28, 1984. EPA proposed approval of this revision on May 9, 1985 (50 FR 19548). Modeling activities and the air quality analyses conducted under the COA indicated that the data from the United Refining Company, located in adjacent Glade Township were necessary to complete the model evaluation study. United began to supply SO<sub>2</sub> emission data necessary to complete the model study. Because of the unforeseen contributions of the United Refining Company, this SIP revision, as proposed, was no longer adequate. In June 1992, EPA notified the Commonwealth that it had failed to