



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0315]

RIN 1625-AA00

Safety Zone; Upper Mississippi River, Mile 183.0 to 183.5

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, from mile 183.0 to mile 183.5, in the vicinity of the Merchants Bridge and extending the entire width of the river. This safety zone is needed to protect repair workers and vessels transiting the area on the Upper Mississippi River to complete bridge repairs.

Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: Effective Date: this rule is effective in the CFR from [INSERT DATE OF PUBLICATION] until 7 p.m. on December 31, 2012. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. on April 10, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0315 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2012-0315 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Petty Officer Ryan Christensen, Sector Upper Mississippi River Waterways Management Department at telephone 314-269-2721, e-mail [Ryan.D.Christensen@uscg.mil](mailto:Ryan.D.Christensen@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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)(B), the Coast Guard finds that good cause exists for not using the NPRM process. On April 10, 2012, the Coast Guard received notice that a marine casualty caused damage to a railway bridge on April 9, 2012. Immediate repairs are now required for the bridge. This short notice did not allow for the time needed to publish a NPRM and provide for a comment period. Delaying this rule by publishing a NPRM would be contrary to the public interest by unnecessarily delaying the bridge repairs and the safety zone needed to protect repair workers and vessels transiting the area on the Upper Mississippi River. Additionally, delaying the repairs and inspections for the NPRM process would unnecessarily impede the flow of commercial river traffic and railroad traffic. This rule is needed to protect repair workers and vessels transiting this area on the Upper Mississippi River.

For the same reasons, 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 by providing 30 days notice would be contrary to the public interest by unnecessarily delaying the bridge

repairs and the safety zone needed to protect repair workers and vessels transiting the area on the Upper Mississippi River.

#### Basis and Purpose

On April 9, 2012, a marine casualty involving a down bound crane barge striking the Merchants Bridge resulted in structural damage to the bridge, reduced vertical clearance, hanging wreckage, and a North-side railroad track closure. Initial repairs to the bridge started immediately with Saint Louis Bridge Construction performing a series of repairs and inspections on the Merchants Bridge in the vicinity of mile 183.0 to 183.5 on the Upper Mississippi River. After initial repairs, ongoing and intermittent inspections and full repairs will continue and the Coast Guard determined that a temporary safety zone is necessary to protect repair workers and marine traffic. Establishing this safety zone around the Merchants Bridge and repair personnel and equipment is intended to safeguard against disruption of positioned repair equipment, potential large falling debris, and possible hazards related to ongoing repairs in and around commercial traffic in the vicinity of mile 183.0 to 183.5 on the Upper Mississippi River.

#### Discussion of Rule

The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, from mile 183.0 to 183.5, in the vicinity of Merchants Bridge and extending the

entire width of the river. Entry into this zone is prohibited to all vessels and persons unless specifically authorized by the Captain of the Port Upper Mississippi River. This rule is effective from 7 a.m. on April 10, 2012 through 7 p.m. on December 31, 2012, but will only be enforced during intermittent repair and inspection operation periods that will be announced by broadcast notices to mariners with the greatest advance notice possible. Due to the unpredictability of the Upper Mississippi River, National Weather Service's forecasts will be used to determine the most suitable conditions for bridge repairs and inspections. Advanced notice will be given to the maximum extent possible, but despite best efforts, the safety zone may be established with minimal notice when ideal work conditions are identified. The Captain of the Port Upper Mississippi River will inform the public and maritime industry through broadcast notice to mariners of the enforcement periods and changes to the safety zone and its enforcement.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and

Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

Although this rule will be effective until December 31, 2012 unless repairs and inspections are completed sooner, it will only be enforced for limited time periods during days scheduled for repair work or bridge inspections. By enforcing this safety zone for limited periods of time throughout the effective period, marine traffic will not be significantly impacted. Entry into or passage through the safety zone will be considered on a case-by-case basis by the Captain of the Port Upper Mississippi or designated representative. Notifications of, and changes to, the enforcement period will be made via broadcast notice to mariners.

#### 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 the Upper Mississippi River, mile 183.0 to 183.5 during enforcement periods. The enforcement periods will be for a limited duration. By enforcing this safety zone for a limited duration of time intermittently throughout the effective period, marine traffic will not be significantly impacted. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be enforced during limited periods of time throughout the effective period.

If you are a small business entity and are significantly affected by this regulation, please contact Chief Petty Officer Ryan Christensen, Sector Upper Mississippi River Response Department at telephone 314-269-2721, e-mail [Ryan.D.Christensen@uscg.mil](mailto:Ryan.D.Christensen@uscg.mil).

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they

can 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 businesses. 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.

#### 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not affect 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and

Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. This rule establishes a safety zone related to effecting bridge repairs and is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, 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).

An environmental analysis checklist and a categorical exclusion determination are available in the docket where

indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0315 is added to read as follows:

§ 165.T08-0315 Safety Zone; Upper Mississippi River, Mile 183.0 to 183.5.

(a) Location. The following area is a safety zone: all waters of the Upper Mississippi River, mile 183.0 to 183.5, in the vicinity of the Merchants Bridge, extending the entire width of the waterway.

(b) Effective date. This rule is effective from 7 a.m. on April 10, 2012 through 7 p.m. on December 31, 2012.

(c) Periods of Enforcement. This rule will be enforced intermittently during the effective period when conditions are conducive for bridge repairs and inspections based on contractor availability, river forecasts, and observed weather. The Captain of the Port Upper Mississippi River will inform the

public of the enforcement periods and any changes through broadcast notice to mariners.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River may be contacted at 314-269-2332 or VHF-FM 16.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers.

Dated: April 10, 2012

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B. L. BLACK,

Captain, U.S. Coast Guard

Captain of the Port Upper Mississippi River

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