



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0998]

RIN 1625-AA00

Safety Zone, Upper Mississippi River MM 35.0 to MM 55.0;
Thebes, IL and Cape Girardeau, MO, and MM 75.0 to MM 85.0;
Grand Tower, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, extending the entire width between miles 35.0 to 55.0, and miles 75.0 to 85.0 from December 15, 2012 until March 31, 2013. This safety zone is needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with contractor operations for the US Army Corps of Engineers to remove underwater rock pinnacles from the Upper Mississippi River. Removal of the underwater rock pinnacles is vital to ensuring the safe navigation of vessels in these stretches of river in low water situations. Entry into this zone is prohibited unless

specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective in the CFR on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 31, 2013. This rule is effective with actual notice for purposes of enforcement on December 15, 2012. This rule will remain in effect through March 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0998. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 Lieutenant Dan McQuate, Marine Safety Unit Paducah Waterways Management Branch, U.S. Coast Guard; telephone 270-442-1621, e-mail: Daniel.J.McQuate@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V.

Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
USACE	United States Army Corps of Engineers
RIAC	River Industry Action Committee

A. Regulatory History and 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 publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

The US Army Corps of Engineers (USACE) originally planned to have a contractor remove underwater rocks in the Thebes, IL and Grand Tower, IL areas on the Upper Mississippi River beginning in mid-February 2013. The

operation was planned to occur in the UMR from mile 38.0 to mile 46.0, and mile 78.0 to mile 80.0. This operation also included the loading of explosives onto vessels at any number of facilities in Cape Girardeau, MO, Thebes, IL, and/or Grand Tower, IL.

The Coast Guard was planning to publish a notice of proposed rulemaking for this zone. However, on Wednesday December 5, 2012, the USACE St. Louis District notified the Coast Guard that due to extreme low water, and the role that would play in restricting vessel drafts on the Upper Mississippi River in Thebes, IL, they were able to award a contract to begin rock removal operations no later than December 15, 2012, and this removal operation could continue to March 31, 2013. Therefore, there is not sufficient time to publish an NPRM and receive public comment before this safety zone would be needed to protect the public from the hazards associated with the removal operations. Delaying this rulemaking to provide a comment period before implementing the necessary safety zone would be impracticable and contrary to the public interest because it would delay the immediate action needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with the USACE contractors underwater rock removal operations.

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. Providing 30 days notice and delaying its effective date would be impracticable and contrary to public interest because immediate action is needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with the USACE contractors underwater rock removal operations.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 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; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The purpose of this safety zone is to protect persons, property and infrastructure from the potential damage and safety hazards associated with contractor blasting operations for the USACE to remove underwater rock pinnacles from the Upper Mississippi River. Removal of the underwater rock pinnacles is vital to ensuring the safe navigation of vessels in these stretches of river in low

water situations. Without this safety zone the public could be placed in danger during the loading, preparation to set, and detonation of explosives being used during this operation, and the removal of the debris following the blasting operations.

C. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone for all vessels on the Upper Mississippi River between miles 35.0 and 55.0, and miles 75.0 and 85.0 from December 15, 2012 until March 31, 2013. The USACE has contracted workers to blast underwater rock pinnacles throughout these stretches of the river. There is currently no set schedule for this operation, so the safety zone will be effective from December 15, 2012 until March 31, 2013, while the enforcement times and exact mile markers impacted for each closure of this safety zone will be coordinated between the Coast Guard, USACE, and the River Industry Action Committee (RIAC). Additionally, the Coast Guard will provide advanced notice of enforcement periods via broadcast notice to mariners and through coordination with the RIAC. During the enforcement period, entry into this zone will be prohibited to all vessels and persons unless specifically authorized by the Captain of the Port (COTP) Sector Ohio Valley or a designated representative. The COTP Sector

Ohio Valley will consider entry into and transit through the safety zone on a case-by-case basis. Any exceptions to these operational restrictions will require authorization by the COTP Ohio Valley or a designated representative. The COTP or a designated representative may be contacted by telephone at 502-779-5422.

D. 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 or executive orders.

1. 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. While stretches of the Upper Mississippi River will be closed to all vessel traffic during enforcement, this will be for a short period of time. Vessels could experience delays throughout this project, but the operations will be

coordinated to allow intermittent passage of vessels when deemed safe.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

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 between miles 35.0 and 55.0, and miles 75.0 and 85.0 from December 15, 2012 to March 31, 2013. Traffic in this area is limited almost entirely to recreational vessels and commercial towing vessels. All traffic passage will be prohibited unless specifically authorized by COTP Ohio Valley. If this operation is not carried out, when the Upper Mississippi River reaches low water levels, the rock

pinnacles that are being removed in this operation could prohibit all vessel traffic from safely transiting the area. Before the activation of the safety zone, the Coast Guard will coordinate any closures with the USACE and RIAC, and issue broadcast notices to mariners to users of the river. This safety zone will not have a significant economic impact on a substantial number of small entities. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels.

3. 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 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, above.

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.

4. 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).

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves restricting vessel traffic on a cumulative 30 mile stretch of the UMR to keep waterway users safe during a USACE contractors rock pinnacle removal operations. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the ADDRESSES section.

E. 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.

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

2. A new temporary § 165.T08-0998 is added to read as follows:

§ 165.T08-0998 Safety Zone; Upper Mississippi River MM 35.0 to 55.0, Thebes, IL and Cape Girardeau, MO, and MM 75.0 to 85.0, Grand Tower, IL.

(a) Location. The following area is a safety zone: all waters of the Upper Mississippi River between miles 35.0 and 55.0, extending the entire width of the river, and all waters of the Upper Mississippi River between miles 75.0 and 85.0, extending the entire width of the river.

(b) Effective dates. This safety zone is effective from December 15, 2012 to March 31, 2013.

(c) Enforcement Period and Informational Broadcasts: This safety zone will only be enforced for certain periods between the effective dates, when the Army Corps of Engineer's contractors are conducting rock removal operations. The Captain of the Port (COTP) Ohio Valley or designated representatives will provide advance notice to

the public of the enforcement periods and locations for the safety zone and of any changes in the effective period of the safety zone through broadcast notices to mariners and through coordination with River Industry Action Committee.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone by all vessels during the enforcement period is prohibited unless authorized by the COTP Ohio Valley or a designated representative.

(2) Vessels requiring entry into or passage through the zone must contact the lead vessel on scene, or Coast Guard Sector Ohio Valley on VHF-FM channel 13 or 16. The lead vessel on scene will be announced via broadcast notice to mariners.

(3) All persons and vessels shall comply with the instructions of the COTP Ohio Valley and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

DATED: December 12, 2012

L. W. HEWETT
Captain, U.S. Coast Guard
Captain of the Port Ohio Valley

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