



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG-2013-0907]

**RIN 1625-AA00**

**Safety Zones; Upper Mississippi River Between Mile 38.0 and 46.0, Thebes, IL; and Between Mile 78.0 and 81.0, Grand Tower, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule and request for comments.

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**SUMMARY:** The Coast Guard is establishing safety zones for all waters of the Upper Mississippi River (UMR) from mile 38.0 to 46.0 and from mile 78.0 to 81.0. These safety zones are needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with subsurface rock removal in the Upper Mississippi River. Any deviation from the conditions and requirements put into place are prohibited unless specifically authorized by the cognizant Captain of the Port (COTP) Ohio Valley or his designated representatives.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material

must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG-2013-0907]. 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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

- (1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

- (2) Fax: (202) 493-2251.

- (3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal

holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail LT Dan McQuate, U. S. Coast Guard; telephone 270-442-1621, e-mail

[daniel.j.mcquate@uscg.mil](mailto:daniel.j.mcquate@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

Table of Acronyms

AIS	Automated Information System
BNM	Broadcast Notice to Mariners
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LNM	Local Notice to Mariners
MM	Mile Marker
MSU	Marine Safety Unit
M/V	Motor Vessel
NPRM	Notice of Proposed Rulemaking
RIAC	River Industry Action Committee
UMR	Upper Mississippi River
USACE	United States Army Corps of Engineers

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments

received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

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. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as 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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor

union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Regulatory History and Information

Based on forecasted historical low water on the UMR in the fall of 2012, the USACE contracted subsurface rock removal operations in Thebes, IL to mitigate the effects of the forecasted low water event. In order to provide additional safety measures and regulate navigation during low water and the planned rock removal operations, the Coast Guard published a temporary final rule in the Federal Register for an RNA from mile 0.0 to 185.0 UMR (77 FR 75850). The RNA was in effect from December 1, 2012 until March 31, 2013, which is when river levels rebounded and the subsurface rock removal operation was delayed because of high water levels. During the effective period for this

temporary RNA, restrictions were enforced for a total of approximately 45 days.

In the fall of 2013, based on changing river conditions, low water was again forecasted and the USACE's contracted subsurface rock removal operations in Thebes, IL were scheduled to resume. The Coast Guard then published a second temporary final rule in the Federal Register re-establishing the RNA (78 FR 70222). Based on the forecasted water levels and the plans and needs for the resumed rock removal operations, the RNA covered a smaller river section extending from mile 0.0 to 109.9 on the UMR. The RNA was implemented to ensure the safety of the USACE contractors and marine traffic during the actual rock removal work, and to support the safe and timely clearing of vessel queues at the conclusion of the work each day. The RNA was in effect from November 4, 2013 until April 12, 2014, but was only enforced from December 10, 2013 until February 19, 2014 due to water levels increasing and forcing the USACE contractors to cease rock removal operations. During the times the RNA was enforced, the Coast Guard worked with the USACE, RIAC, and the USACE contractor to implement river closures and various restrictions to maximize the size of tows that could safely pass while keeping the USACE

contractor crews safe. The Coast Guard also assisted in clearing vessel queues after each closure or restriction.

On April 17, 2014, MSU Paducah contacted USACE St. Louis to determine if subsurface rock removal operations will be conducted in the Upper Mississippi River in the vicinity of Thebes, IL in future years. USACE St. Louis reported that such operations are anticipated to continue as river conditions permit, and that there are multiple phases of subsurface rock removal operations remaining. On August 28, 2014 USACE St. Louis notified the Coast Guard that based on recently acquired data, rock removal operations will also be required in the Upper Mississippi River between miles 78.0 and 81.0 at Grand Tower, IL in the future.

USACE St. Louis also informed the Coast Guard that the environmental window for these operations each year moving forward is July 1 to April 12. However, river conditions likely will not permit work for the majority of that timeframe each year, and in some years river conditions may not permit any work on this project to be completed. This project is expected to go on indefinitely when river conditions permit during the allowable times within the environmental windows. For continuity and based on the

necessary restrictions, USACE St. Louis requested continued involvement of the Coast Guard for navigation expertise and facilitating restrictions with users of the waterway and the contractor. According to USACE St. Louis, the majority of the rock removal operations will impact vessel traffic and requested that the Coast Guard establish restrictions under 33 CFR Part 165, Regulated Navigation Areas and Limited Access Areas to maintain safety of navigation during the rock removal project. The Coast determined that safety zones, one type of Limited Access Area provided for under 33 CFR Part 165, will provide the necessary additional safety measures to ensure commerce can continue to navigate safely while the contractors are working. These safety zones limit access to specific areas of the river during rock removal operations rather than creating a larger regulated area encompassing the entire stretch of river where the work may take place.

The Coast Guard is issuing this 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 rule. This interim rule is effective upon publication without prior notice through publication in the Federal Register, but also invites comments regarding the creation of permanent safety zones before the rule is published in final form. The Coast Guard will address all comments accordingly, whether through response, additional revision to the regulation, or otherwise. Completing the full NPRM process would cause an unnecessary delay in publishing enforceable safety zones. This interim rule affords the public the opportunity to comment while the safety zones are in place but before making it a final rule.

For this year, the rock removal operations could begin again as soon as September 15, 2014. The commercial towing vessel industry, through RIAC, has been notified that these operations will be conducted in future years and the additional restrictions provided by the safety zones will be necessary during that work. Other restrictions encompassing larger sections of the river have been in place through temporary RNAs during the last two work seasons in 2012 and 2013. The Coast Guard did not receive

any feedback causing us to believe the public opposes restrictions for future years to continue facilitating safe navigation and commerce during the subsurface rock removal operations, being conducted to benefit the towing industry during future low water events.

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 day notice would unnecessarily delay the safety zones effective date for restrictions that may need to go into effect as soon as September 15, 2014.

### C. 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 safety zones.

The purpose of these safety zones are to protect persons and vessels while subsurface rock removal operations are ongoing on the UMR from mile 38.0 to mile 46.0 and from mile 78.0 to mile 81.0. The removal

operations pose significant safety hazards to vessels and mariners operating on the UMR. At the previous request of RIAC and after reviewing best practices from the previous temporary RNAs in effect in 2012 and 2013, the Coast Guard plans to assist in facilitating the clearing of vessel queues in future years following restricted access on the UMR from mile 38.0 to mile 46.0 and from mile 78.0 to mile 81.0. For these reasons, the Coast Guard is to establishing these safety zones to limit vessel access between mile 38.0 and mile 46.0, and between mile 78.0 and mile 81.0 on the UMR. Once comments to this interim rule are received and addressed, the intent is to follow with a final rule. The final rule will address and take into account as necessary comments made during comment period for this interim rule.

#### D. Discussion of the Interim Rule

The Coast Guard is establishing these safety zones for all vessel traffic on the UMR from mile 38.0 to mile 46.0, and from mile 78.0 to mile 81.0, extending the entire width of the river. These safety zones will be enforced based on the actual or planned subsurface rock removal operations between mile 38.0 and mile 46.0 and between mile 78.0 and mile 81.0. Restrictions and requirements for these safety zones and related to approval to transit through these

safety zones will be the minimum necessary to protect persons, property, and infrastructure from the potential hazards associated with low water and subsurface rock removal operations. Such restrictions may include, but are not limited to, river closures, tow size, tow configuration, vessel/barge draft, assist vessels, speed, hours of transit, and one-way traffic. These restrictions, in addition to required use of AIS when fitted, and vessel reporting previously existed under temporary RNA's (77 FR 75850 and 78 FR 70222) covering a much broader segment of the UMR. Enforcement times and specific restrictions and requirements will be announced via Broadcast Notice to Mariners (BNM), through outreach with the RIAC, through LNM, or through other public notice. Any deviation from the requirements put into place are prohibited unless specifically authorized by the COTP Ohio Valley, or a designated representative. Requests to deviate from the specific restrictions and regulations will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7465 or can be reached by VHF-FM channel 16.

#### E. 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.

This rule establishes safety zones for vessels on all waters of the UMR from mile 38.0 to mile 46.0, and from mile 78.0 to mile 81.0. The safety zones listed in this interim rule will only restrict vessel traffic from entering, transiting, or anchoring within specific sections of the UMR. Notifications of enforcement times and restrictions put into effect for these safety zones will be communicated to the marine community via BNM, through outreach with RIAC, and through LNMs. Such notices provide the opportunity for industry to plan transits accordingly and work around the schedule of rock removal operations as necessary. The impacts on navigation will be limited to ensuring the safety of mariners and vessels associated with

hazards presented by USACE contractor operations involving subsurface rock removal, and the safe and timely resumption of vessel traffic following any river closures or restrictions associated with subsurface rock removal operations. Restrictions under these safety zones will be the minimum necessary to protect mariners, vessels, the public, and the environment from known or perceived risks.

## 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 UMR during USACE contracted subsurface rock removal operations. These safety zones will not have a significant economic impact on a

substantial number of small entities for the following reasons. While the safety zones listed in this interim rule will restrict vessel traffic from entering, transiting, or anchoring within specific sections of the UMR, this rule does allow for the intermittent passing of vessels. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels subject to noticed restrictions and requirements. Notifications to the marine community will be made through BNM, LNM, and communications with RIAC. Notices of changes to the safety zones and enforcement times will also be made. Additionally, deviation from the restrictions may be requested from the COTP Ohio Valley or designated representative and will be considered on a case-by-case basis.

### 3. Assistance for Small Entities

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 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 will not call for a 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 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 determined that this rule 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 INTFORMATION 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 cause 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 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 creation of safety zones from mile 38.0 to mile 46.0, and from mile 78.0 to mile 81.0 UMR. 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

### 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; 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department  
of Homeland Security Delegation No. 0170.1

2. A new § 165.842 is added to read as follows:

**§ 165.842 Safety Zone; Upper Mississippi River between mile  
38.0 and mile 46.0, Thebes, IL; and between mile 78.0 and  
mile 81.0, Grand Tower, IL.**

(a) Location. The following areas are safety zones:  
all waters of the Upper Mississippi River from mile 38.0 to  
mile 46.0, Thebes, IL; and from mile 78.0 to mile 81.0,  
Grand Tower, IL, extending the entire width of the river.

(b) Effective dates. These safety zones are effective  
beginning [INSERT DATE OF PUBLICATION IN THE FEDERAL  
REGISTER]. Enforcement times and the requirements of this  
safety zones will be noticed as soon as is practicable

before subsurface rock removal operations begin, actual notice will be used and additional notices made through Broadcast Notices to Mariners (BNM), or Local Notices to Mariners (LNM).

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this area is prohibited unless authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

(2) The Captain of the Port (COTP) Ohio Valley may prescribe, for all or specific portions of the safety zones, periods of enforcement and minimum operational requirements necessary to enter, transit through, or stop within the safety zone in order to preserve safe navigation on the Upper Mississippi River during subsurface rock removal operations and clearing of vessel queues following rock removal operations, including, but not limited to, the required use of assist vessels; and restrictions on the following:

- (i) Tow size;
- (ii) Tow configuration;
- (iii) Vessel/barge draft;
- (iv) Speed;
- (v) Under keel clearance;

(vi) Hours of transit; and

(vii) One way traffic.

(3) All persons and vessels must comply with any requirement prescribed under paragraph (c)(2) of this section.

(4) Persons or vessels may request an exception from any requirement prescribed under paragraph (c)(2) of this section from the COTP Ohio Valley or a designated representative who may be a commissioned, warrant, or petty officer of the Coast Guard. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7465 or on VHF-FM channel 16.

(d) Enforcement. The COTP Ohio Valley will notify the public of the specific requirements prescribed under paragraph (c)(2) of this section and of the times when those requirements will be enforced or when enforcement will be suspended, using means designed to ensure maximum effectual notice including, but not limited to, broadcast notices to mariners (BNM) and communications through the River Industry Action Committee.

Dated: September 16, 2014

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R. V. TIMME  
Captain, U. S. Coast Guard  
Captain of the Port Ohio Valley

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