



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-1121]

RIN 1625-AA00

Safety Zone; Upper Mississippi River and Illinois River, MO and IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing emergency temporary safety zones for all waters of the Upper Mississippi River (UMR) between miles 109.9 and 185.5 and all waters of the Illinois River (ILR) between miles 0 and 128.9. The emergency safety zones are needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with high waters. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port (COTP). Deviation from the safety zones may be requested and will be considered on a case-by-case basis as specifically authorized by the Captain of the Port (COTP) or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. on January 22, 2016. For the purposes of enforcement, actual notice will be used from 3:00 p.m. on December 28, 2015 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2015-1121 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314-269-2332, email Sean.M.Peterson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
ILR	Illinois River
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
UMR	Upper Mississippi River
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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 because of the increased safety risks caused by high waters on the UMR and ILR. On December 28, 2015, the Coast Guard determined that immediate action is necessary to establish emergency safety zones to protect life and property from the hazards

associated with and resulting from high waters. It is impracticable to publish an NPRM because we must establish these safety zones by December 28, 2015. Broadcast Notices to Mariners (BNM) and information sharing with waterway users will update mariners of the closures and enforcement times during this emergency situation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice would be contrary to public interest because immediate action is needed to protect life and property from the hazards associated with and resulting from high waters.

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 Upper Mississippi River determined that potential hazards associated with and resulting from high waters and related recovery efforts are present in the area. These hazards require additional safety measures in the form of safety zones extending from mile 109.9 to 185.5 on the UMR and mile 0 to 128.9 on the ILR to protect those operating in the area and for the Coast Guard to maintain navigational safety.

IV. Discussion of the Rule

The Coast Guard is establishing two temporary emergency safety zones prohibiting access to the UMR between miles 109.9 and 185.5 and the ILR between miles 0 and 128.9, extending the entire widths of the rivers beginning at 3:00 p.m. on December 28, 2015, through 11:59 p.m. on January 22, 2016 or until waters recede and conditions allow for safe navigation, whichever occurs earlier. Deviation from the emergency safety zones may be requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The

COTP may be contacted by telephone at 314-269-2332 or can be reached by VHF-FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This rule establishes temporary emergency safety zones placing restrictions on vessels transiting the UMR between miles 109.9 and 185.5 and the ILR between miles 0 and 128.9. Notifications of enforcement times will be communicated to the marine community via BNM. The impacts on navigation will be limited to ensure the safety of mariners and vessels during hazardous conditions associated with high waters.

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 zones may be small entities, for the reasons stated in section V. A. above, this rule will not have significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 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 E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 closure of the UMR

between miles 109.9 and 185.5 and the ILR between miles 0 and 128.9. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. 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.

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, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-1121 to read as follows:

§ 165.T08-1121 Safety Zone; Upper Mississippi River between miles 109.9 and 185.5; and Illinois River between miles 0 and 128.9; MO and IL.

(a) Location. The following areas are safety zones:

(1) All waters of the Upper Mississippi River between miles 109.9 and 185.5, extending the entire width of the river; and

(2) All waters of the Illinois River between miles 0 and 128.9, extending the entire width of the river.

(b) Definitions. Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officers operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Upper Mississippi River in the enforcement of the safety zones.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zones described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF-FM channel 16, or through Coast Guard Sector Upper Mississippi River at 314-269-2332. Those in the safety zones must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement periods. This rule is effective from 3:00 p.m. on December 28, 2015 through 11:59 p.m. on January 22, 2016, or until waters recede and conditions allow for safe navigation, whichever occurs first.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through broadcasts notice to mariners of the enforcement period for the emergency safety zones as well as any changes in the dates and times of enforcement.

Dated: December 28, 2015.

R.S. Rhodes,

Commander, U.S. Coast Guard,

Alternate Captain of the Port Upper Mississippi River.

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