



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0942]

RIN 1625-AA00

Safety Zone; Upper Mississippi River, St. Louis, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters on the Upper Mississippi River between mile marker (MM) 183.7 and MM 185.1. This temporary safety zone is necessary to provide for the safety of life and property on all navigable waters near St. Louis, MO for dredging being conducted in the navigational channel at the lower entrance of the Chain of Rocks Canal by the U.S. Army Corps of Engineers. During the period of enforcement, entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or other designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 7 a.m. on October 21, 2017. For the purposes of enforcement, actual notice will be used from 5 p.m. on October 8, 2017 through [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-2017-0942 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, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314-269-2332, email Sean.M.Peterson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
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 it is impracticable.

The U.S. Army Corps of Engineers notified the Coast Guard on September 28, 2017 that dredging would begin October 8, 2017 at 5 p.m. at the lower entrance to the

Chain of Rocks Canal, which would obstruct the navigational channel to vessel traffic. Due to the risks associated with this work in the navigational channel, a safety zone is needed. We must establish this temporary safety zone by October 8, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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*. Delaying the effective date of the rule is contrary to the public interest because immediate action is necessary to prevent possible loss of life and property from the hazards associated with dredging in the navigational channel.

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 Sector Upper Mississippi River (COTP) has determined that potential hazards associated with dredging in the navigational channel from 5 p.m. on October 8, 2017 through 7 a.m. on October 21, 2017 will be a safety concern for all navigable waters of the Upper Mississippi River between mile marker (MM) 183.7 and MM 185.1. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary safety zone before, during, and after the dredging.

IV. Discussion of the Rule

This rule establishes a safety zone each day from 5 p.m. to 7 a.m. beginning on October 8, 2017 and ending on October 21, 2017, or until conditions allow for safe navigation, whichever occurs earlier. The safety zone will cover all navigable waters between MM 183.7 and MM 185.1 on the Upper Mississippi River in St. Louis, MO.

The safety zone is intended to ensure the safety of vessels and these navigable waters during channel dredging operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Exact times of the closures and any changes to the planned schedule will be communicated to mariners using Broadcast and Local Notice to Mariners.

V. 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 and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This temporary final rule establishes a safety zone impacting a mile and a half area on the Upper Mississippi River for a limited time period of fourteen hours on fourteen separate days. During the enforcement period, vessels are prohibited from entering into or remaining within the safety zone unless specifically authorized by the COTP or other designated representative.

Additionally, notice of the safety zone or any changes in the planned schedule will be made via Broadcast and Local Notice to Mariners. Entry into this safety zone may be requested from the COTP or other designated representative and will be considered on a case-by-case basis.

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

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 these rules. 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 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. 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 safety zone lasting fourteen hours on fourteen separate nights that will prohibit entry from MM 183.7 to MM 185.1 on the UMR from October 8, 2017 to October 21, 2017. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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, and 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.T08-0942 to read as follows:

§ 165.08-0942 Safety Zone; Upper Mississippi River, St. Louis, MO.

(a) Location. The following area is a safety zone: All navigable waters of the Upper Mississippi River between mile marker (MM) 183.7 to MM 185.1, St. Louis, MO.

(b) Definitions. As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Upper Mississippi River (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in § 165.23 of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a 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 by telephone at 314-269-2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or a designated representative.

(d) Enforcement period. This section will be enforced from 5 p.m. on October 8, 2017, through 7 a.m. on October 21, 2017. It will be enforced daily from 5 p.m. through 7 a.m.

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

Dated: October 6, 2017

STOERMER, SCOTT A,

CAPTAIN, U.S. Coast Guard,

Captain of the Port Sector Upper Mississippi River

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