



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-1044]

RIN 1625-AA11

Regulated Navigation Area; Upper Mississippi River MM 0.0 to MM 185.0; Cairo, IL to St. Louis, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) for all waters of the Upper Mississippi River between miles 0.0 and 185.0. This RNA is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with extreme low water conditions on 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) (COTP Ohio Valley for MM 0.0 to MM 109.9 or COTP Upper Mississippi River for MM 109.9 to MM 185.0) or their designated representatives.

DATES: This rule is effective in the CFR on [INSERT DATE OF PUBLICATION] and effective with actual notice for purposes of

enforcement on December 1, 2012, until March 31, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-1044]. 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.

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 or CWO Scott Coder, U. S. Coast Guard; telephone 314-269-2575, email justin.s.coder@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

AIS	Automatic Identification System
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
MM	Mile Marker
M/V	Motor Vessel
NPRM	Notice of Proposed Rulemaking

RIAC	River Industry Action Committee
RNA	Regulated Navigation Area
UMR	Upper Mississippi River
USACE	United States Army Corps of Engineers

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 Coast Guard has tracked low water conditions throughout the Western Rivers during the summer and fall of 2012. Throughout this time, it has not been possible to accurately predict the extent to which rivers may be affected due to uncertainties with local weather, specifically rainfall amounts. On November 20, 2012 the United States Army Corps of Engineers (USACE) and Coast Guard hosted a joint meeting with the River Industry Action Committee (RIAC), the industry committee for the Upper Mississippi River (UMR), in St. Louis, MO. During this meeting the USACE noted that approximately two-thirds of the continental United States continues to be affected by an ongoing and persistent drought. As a result of the drought and the normal annual reduced flows per the operational plan for the Missouri River, they predicted extreme low water conditions in the UMR beginning in early December 2012. Therefore, various control measures or directions to vessels operating on the UMR are immediately needed to address safe

navigation concerns brought on by the extreme low water conditions. Due to the timing of the actual notice of definitive low water conditions, there is not enough time to complete the NPRM process before the onset of extreme low water conditions that will expose persons and property to safety hazards, contrary to the public interest.

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 the RNA's effective date would be contrary to public interest because immediate action is needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with low water conditions on the UMR.

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 RNAs.

The purpose of this RNA is to address safe navigation concerns for persons and vessels while extreme low water conditions exist on the UMR from mile 0.0 to mile 185.0. The extreme low water conditions pose significant safety hazards to vessels and mariners operating on the UMR. For this reason, the Coast Guard is establishing this RNA to implement various

waterway operational controls that vessels will have to follow while operating on the UMR.

C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary RNA for all vessel traffic on the UMR between mile 0.0 and 185.0, extending the entire width of the river. Within this RNA various restrictions and requirements may be put into effect based on actual or projected channel widths and depths. These restrictions and requirements will be the minimum necessary for the protection of persons, property and infrastructure from the potential damage and safety hazards associated the extreme low water and may include, but are not limited to, limitations on tow size, tow configuration, vessel/barge draft, assist vessels, speed, under keel clearance, vessel traffic reporting, hours of transit, one way traffic, and use of Automatic Identification System (AIS) if fitted onboard a vessel. Enforcement times and specific restrictions and requirements for the entire regulated navigation area, or specific areas within the regulated navigation area, will be announced via Broadcast Notice to Mariners (BNM), through outreach with RIAC, the Local Notice to Mariners, and through other public notice.

Any deviation from the requirements put into place are prohibited unless specifically authorized by the COTP Ohio Valley, COTP Upper Mississippi River, or a designated

representative. Deviations for 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. The COTP Upper Mississippi River may be contacted by telephone at 314-269-2332. All COTPs can be reached by VHF-FM channel 16.

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. This rule establishes a temporary RNA for vessels on all waters of the UMR from mile 0.0 to mile 185.0. Notifications of enforcement times of control measures and requirements put into effect for the entire RNA, or specific areas within the RNA, will be communicated to the marine

community via BNM, through outreach with RIAC, Local Notice to mariners, and through other public notice. The impacts on navigation will be limited to addressing the safety of mariners and vessels associated with hazards due to river conditions during low water. Operational controls under this RNA will be the minimum necessary to protect mariners, vessels, the public, and the environment from risks due to extreme low water conditions.

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 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, from December 1, 2012 to March 31, 2013. This RNA will not have a significant economic impact on a substantial number of small entities because traffic in this area is limited almost entirely to recreational vessels and commercial towing vessels, and this rule allows vessels to pass through the area, subject to certain restrictions. Notifications to the marine community will be made through BNM, communications with

RIAC, and other public notice. Notices of changes to the RNA and effective times will also be made. Deviation from the restrictions may be requested from the COTP 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 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 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 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 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. Add new temporary § 165.T08-1044 to read as follows:

§ 165.T08-1044 Regulated Navigation Area; Upper Mississippi River between mile 0.0 and 185.0, Cairo, IL to St. Louis, MO.

(a) Location. The following area is a regulated navigation area (RNA): all waters of the Upper Mississippi River between mile 0.0 and 185.0, Cairo, Illinois, to St. Louis, Missouri, extending the entire width of the river.

(b) Effective dates. This RNA is effective and enforceable with actual notice from December 1, 2012 through March 31, 2013.

(c) Regulations. (1) Within their respective portions of the RNA, the Captains of the Port (COTP) Ohio Valley and Upper Mississippi River may prescribe, for all or specific portions of the RNA, periods of enforcement and minimum operational requirements necessary to preserve safe navigation on the Upper Mississippi River despite extreme low water conditions,

including, but not limited to, the required use of assist vessels, vessel traffic reporting, and Automatic Information Systems when fitted onboard a vessel; 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.

(2) All persons and vessels must comply with any requirement prescribed under paragraph (c) (1) of this section.

(3) Persons or vessels may request an exception from any requirement prescribed under paragraph (c) (1) of this section from the cognizant COTP or their designated representative who may be a commissioned, warrant, or petty officer of the Coast Guard or a military or civilian member of the U.S. Army Corps of Engineers. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7465. The COTP Upper Mississippi River may be contacted by telephone at 314-269-2332. Both may also be contacted on VHF-FM channel 16.

(d) Enforcement. The COTP Ohio Valley and COTP Upper Mississippi River will notify the public of the specific requirements prescribed under paragraph (c)(1) 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: December 14, 2012.

R. A. Nash,
Rear Admiral, U. S. Coast Guard
Eighth District Commander.

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