



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0878]

RIN 1625-AA00

Safety Zone; Upper Mississippi River between Mile 44 and 46; Thebes, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, extending the entire width from mile 44 and 46. This safety zone is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with the removal of two 16 inch Enterprise pipelines in the navigation channel. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until January 31, 2015. For the purposes of enforcement, actual

notice will be used from November 1, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0878]. 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 MSU Paducah, U.S. Coast Guard; telephone 270-442-1621, e-mail [Heather.Norman@uscg.mil](mailto:Heather.Norman@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

APA	Administrative Procedures Act
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
NPRM	Notice of Proposed Rulemaking

#### 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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as it would be impracticable and contrary to the public interest. On 23 September 2014, the Coast Guard received information about the scope and extent of a project, beginning 02 October 2014, involving the removal of two 16 inch Enterprise pipelines located at MM 45, Upper Mississippi River, Thebes, IL. Removal operations are anticipated to be approximately 4 hours per day until completion. The Coast Guard determined that immediate action is necessary to establish a safety zone to protect life and property from

the hazards associated with and resulting from the pipeline removal. The Coast Guard was not advised of the scope and extent of this potentially hazardous condition in sufficient time to publish a NPRM.

This safety zone may include closures and/or navigation restrictions and requirements that are vital to maintaining safe navigation on the Upper Mississippi River during the Enterprise pipeline removal. Therefore, delaying the effective date for this emergency safety zone to complete the NPRM process would be contrary to the public interest as it would delay the safety measures vital to safe navigation. Broadcast Notices to Mariners (BNM) and information sharing with the waterway users will update mariners of the restrictions, requirements, and enforcement times during this emergency situation.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this emergency rule 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 the Enterprise pipeline removal.

## 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 safety zones.

The purpose of this safety zone is to protect life and property from the hazards associated with the removal of two 16 inch pipelines at mile 45 Upper Mississippi River. The removal of the pipelines poses a hazard to vessel traffic while they are being removed. For this reason, the Coast Guard is prohibiting entry from mile 44 to 46 Upper Mississippi River by all vessels during the enforcement period announced by BNM unless authorized by the COTP Ohio Valley or a designated representative.

## C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary safety zone for all vessel traffic on the Upper Mississippi River from mile 44 to mile 46, extending the entire width of the river. Entry into and through this zone is prohibited to all vessels and persons unless specifically authorized by the COTP Sector Ohio Valley or designated representative.

This rule is effective from November 1, 2014 to January 31, 2015 or until pipeline removal is completed, whichever occurs first. Enforcement times and specific restrictions will be announced via BNM. The company completing this project states during the effective time of this safety zone, they anticipate the need to close the river for approximately 4 hours on one single occasion. Any exceptions to these operational restrictions must be authorized 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. This rule establishes a temporary safety zone for vessels on all waters of the Upper Mississippi River, extending the entire width from mile 44 to mile 46. Notifications of enforcement times will be communicated to the marine community via BNM and through Local Notice to Mariners (LNM). The impacts on routine navigation are expected to be minimal as the restrictions will be enforced only as necessary while the pipelines are being removed at mile 45 Upper Mississippi River. The company completing this project states during the effective time of this safety zone, they anticipate the need to close the river for approximately 4 hours on one single occasions. After this removal is complete, the safety zone will be canceled. Additionally, deviation from the safety zone restriction may be requested from the COTP Ohio Valley or designated representative and will be considered on a case-by-case basis.

## 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, from mile 44 to mile 46 from November 1, 2014 to January 31, 2015. 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, and the restrictions will be enforced only as necessary while removal of the pipeline is being completed. Enforcement times and specific restrictions will be announced via BNM, LNM, or through other public notice. The company completing this project states during the effective time of this safety zone, they anticipate the need to close the river for approximately 4 hours on one single occasion. When this work is completed, the safety zone will be canceled. Deviation from the safety zone restriction 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 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 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 the creation of a safety zone. The safety zone is implemented to protect persons and property due to removal of two 16 inch pipelines at mile 45 Upper Mississippi River. 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. 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 temporary § 165.T08-0878 is added to read as follows:

§ 165.T08-0878 Safety Zone; Upper Mississippi River MM 44 to 46, Thebes, IL.

(a) Location. The following area is a safety zone: all waters of the Upper Mississippi River from mile 44 to 46, Thebes, IL., extending the entire width of the Upper Mississippi River.

(b) Effective dates. This rule is effective from November 1, 2014 to January 31, 2015 or until pipeline removal is completed, whichever occurs first. Enforcement

times and specific restrictions will be announced via Broadcast Notice to Mariners (BNM).

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

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

(3) Persons or vessels may request deviation from the safety zone restriction prescribed under paragraph (c) (1) 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) Informational Broadcasts. The Captain of the Port Ohio Valley 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 2, 2014

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

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