



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0585]

RIN 1625-AA00

Safety Zone; Upper Mississippi River, Crystal City, MO

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for navigable waters of the Upper Mississippi River (UMR) from mile 147.5 to 148.5. This action is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with work being completed on new power lines across the river. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** 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:** You may submit comments identified by docket number USCG-2017-0585 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, 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**

CFR	Code of Federal Regulations
COTP	Captain of the Port Upper Mississippi River
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
UMR	Upper Mississippi River
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On May 1, 2017, Ameren notified the Coast Guard that it would be conducting high wire work across the Upper Mississippi River (UMR) at river mile 148 from 7:30 a.m. to 6:30 p.m. each day beginning October 17, 2017 through November 01, 2017. Hazards involved with high wire work include falling cable and a blocked navigation channel. Due to the risks associated with this work crossing the navigable channel, a closure would be needed. The Captain of the Port Upper Mississippi River (COTP) has determined that potential hazards associated with stretching power lines across the navigational channel present safety concerns for anyone within this limited area of the UMR. The purpose of this proposed rulemaking is to ensure the safety of vessels and the navigable waters between mile markers (MM) 147.5 and MM 148.5 during the high wire work over the river. The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a safety zone from 7:30 a.m. on October 17, 2017, through 6:30 p.m. on November 01, 2017. The safety zone would include all navigable waters between MM 147.5 and MM 148.5 on the UMR and would be enforced from 7:30 a.m. to 6:30 p.m. each day or until conditions allow for safe navigation, whichever occurs earlier. The duration of the zone is intended to ensure the safety of the vessels on the navigable waters during the high wire work. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 day of the safety zone. This proposed rule would have minimum impact on navigable waterway vessel traffic because it will only be in effect during daylight hours from 7:30 a.m. to 6:30 p.m., and would restrict transit in and through a section of the UMR of one mile. Moreover, the Coast Guard would issue a BNM (Broadcast Notice to Mariners) via VHF-FM radio channel 16 about the zone and the proposed rule would allow vessels to seek permission to enter the zone.

#### 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 proposed rule would 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.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule has implications for federalism or Indian tribes, please contact the person

listed in the FOR FURTHER INFORMATION CONTACT section.

#### 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a safety zone on the UMR from MM 147.5 to MM 148.5. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary Record of Environmental Consideration (REC) supporting this determination is 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 proposed 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.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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. We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

## 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 proposes to amend 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.T08-0585 to read as follows:

§ 165.T08-0585 Safety Zone; Upper Mississippi River 147.5 to 148.5, Crystal City, MO.

(a) **Location.** The following area is a safety zone: all navigable waters of the Upper Mississippi River mile 147.5 to 148.5, Crystal City, 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 Upper Mississippi River (COTP) in the enforcement of the safety zone.

(c) **Regulations.** (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone 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 zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This section will be enforced from 7:30 a.m. on October 17, 2017 through 6:30 p.m. on November 01, 2017.

(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.

Dated: August 2, 2017

S.A. STOERMER,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port Upper Mississippi River  
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