

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG–2019–0202]

RIN 1625–AA00

**Safety Zone; Missouri River, Miles 226–360, Glasgow, MO to Kansas City, MO**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Missouri River from mile marker (MM) 226 to MM 360 between Glasgow, MO and Kansas City, MO. This action is necessary to provide for the safety of persons, vessels, and the marine environment on these navigable waters as a result of increasing flood conditions on the river that is threatening to overtop levees. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

**DATES:** This rule is effective without actual notice from April 1, 2019 until April 30, 2019, or until cancelled by the Captain of the Port Sector Upper Mississippi River, whichever occurs first. For the purposes of enforcement, actual notice will be provided from 8:30 a.m. on March 26, 2019 until April 1, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2019–0202 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 Lieutenant Commander Christian Barger, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2560, email [Christian.J.Barger@uscg.mil](mailto:Christian.J.Barger@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 Federal Register  
 NPRM Notice of proposed rulemaking  
 § Section

USACE United States Army Corps of Engineers  
 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. It is impracticable because we must establish this safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone and compromise public safety.

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**. Delaying this rule would be contrary to public interest because immediate action is necessary to respond to the potential safety hazards associated with floodwaters threatening to overtop levees along the river.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with flood waters threaten to overtop levees along the river. The United States Army Corps of Engineers (USACE) Kansas City District has expressed concern that vessel traffic in the affected area could cause damage to the levees resulting in overtopping or failure. This rule is necessary to ensure the safety of persons, vessels, and the marine environment on these navigable waters due to the flood impacts to USACE levees.

**IV. Discussion of the Rule**

On March 25, 2019, the USACE Kansas City District contacted the Coast Guard to report an increase in flood waters approaching the tops of levees along the Missouri River between Mile Marker (MM) 226 and MM 360 and requested a river closure to ensure the safety of persons, vessels, and the marine environment that would result if

floodwaters overtop the levees. This rule establishes a temporary safety zone from March 26, 2019 until April 30, 2019, until cancelled by the Captain of the Port Sector Upper Mississippi River (COTP), whichever occurs first. The safety zone will cover all navigable waters of the Missouri River from MM 226 to MM 360, unless reduced in scope by the COTP as flood conditions warrant.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in size of the safety zone as flood conditions improve, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

**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 emergency nature of the

action and after consultation with representatives of the shipping industries that use this reach of river indicate that the many shipping companies have already made arrangements to avoid this area. Moreover, the Coast Guard will issue a BNM via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone 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 temporary 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 (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 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 Directive 023–01 and Commandant Instruction M16475.1D, 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 temporary safety zone prohibiting entry on a ninety mile stretch of the Missouri River that is experiencing significant flooding that is impacting levees. It is categorically excluded from further review under paragraph L60(d) of

Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination will be made 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, 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:** 46 U.S.C. 70034; 46 U.S.C. 70051; 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.T08–0202 to read as follows:

#### § 165.T08–0202 Safety Zone; Missouri River, Miles 226–360, Glasgow, MO to Kansas City, MO.

(a) *Location.* The following area is a safety zone: all navigable waters of the Missouri River from mile marker (MM) 226 to MM 360. This section will be enforced on all navigable waters of the Missouri River from MM 226 to MM 360, unless reduced in scope by the Captain of the Port Sector Upper Mississippi River (COTP) as flood conditions warrant.

(b) *Effective period.* This rule is effective without actual notice from April 1, 2019 until April 30, 2019, or until cancelled by the COTP, whichever occurs first. For the purposes of enforcement, actual notice will be provided from 8:30 a.m. on March 26, 2019 until April 1, 2019.

(c) *Regulations.* (1) In accordance with the general safety zone regulations in § 165.23, entry of persons or vessels into this safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S.

Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or a designated representative via VHF-FM channel 16, or through USCG Sector Upper Mississippi River at 314-269-2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in size of the safety zone as flood conditions improve, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: March 26, 2019.

**S.A. Stoermer,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.*

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**BILLING CODE 9110-04-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 1

RIN 2900-AQ27

#### Release of Information From Department of Veterans Affairs' Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs' (VA) regulations governing the submission and processing of requests for information under the Freedom of Information Act (FOIA) and the Privacy Act to reorganize, streamline, and clarify existing regulations.

**DATES:** This rule is effective May 1, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Catherine Nachmann, Attorney, Office of General Counsel (024), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-7742 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On April 5, 2018, VA published a proposed rule in the **Federal Register** [83 FR 14613]. We proposed to amend VA's regulations pertaining to release of information under 5 U.S.C. 552 and implementation

of the FOIA, codified at 38 CFR 1.550 through 1.562. We proposed to update VA's FOIA regulations to implement amendments in the FOIA Improvement Act of 2016, Public Law 114-185, and those governing release of information from claimant records protected under the Privacy Act of 1974, namely 38 CFR 1.577 (c) and (e) and 1.580. In addition to complying with statutory changes, we proposed to amend the regulations to clarify sections as needed and streamline VA processes regarding release of information, thus making it easier for the requester to follow the agency's procedures.

We received comments from four commenters that both supported the proposed rule and recommended modifications of the proposed rule; one comment was received in duplicate. To clarify, we received total of four comment submissions from four separate commenters. We address each of the recommendations below as we sequentially discuss the relevant provisions.

The first commenter suggested that VA add the definition of FOIA public liaison to the "definitions" section, based on the liaison's increased role in the FOIA process. The commenter suggested that VA use the following definition: "FOIA public liaison means a supervisory agency FOIA official who assists in the resolution of any disputes between the requester and the agency." We agree that adding the definition of FOIA public liaison in the definitions section will assist requesters in identifying individuals potentially involved in the FOIA process; accordingly, we accept this suggestion and will add "FOIA public liaison" to § 1.551. We note that the proposed rule included reference to FOIA public liaison in § 1.556 and § 1.557; in addition, current § 1.551 references the availability of FOIA public liaisons to assist in resolution of disputes between the agency and the requester. Incorporating the definition, therefore, merely elaborates upon the term as presented in VA's FOIA regulations. Accordingly, the addition of this definition is within the scope of the FOIA regulations and is a logical outgrowth of the proposed rule.

The commenter also advised that VA's definition of "request" may be confusing because it provides that the term request includes "any action emanating from the initial demand for records, including an appeal related to the initial demand." We agree that use of the term "appeal" within the definition of "request" may be confusing; accordingly, we revised the definition in § 1.551. The revision of the

definition is a clarification of the current definition and is not a significant alteration of the proposed rule.

The second commenter expressed dissatisfaction with the current VA FOIA web page and suggested that VA engage in usability testing and other means of testing user experience. We note in response that VA Office of Privacy and Identity Protection is revising the VA FOIA web page and in doing so, will address the concerns expressed by the commenter. Regarding usability testing, VA will test the FOIA site to ensure that it is working properly, although VA does not have a specific program to regularly test the site. In the event an issue is identified when VA tests the site, however, the issue will be addressed and resolved. The commenter also suggested that we write the regulations in plain language; we agree and endeavor to write in plain language to the extent possible.

The third commenter objected to the absence of changes to § 1.553; the commenter argued that VA should revise the section in its entirety. The commenter stated that proactive disclosures are not discretionary disclosures because they are triggered by statute, and supplied sample language as provided in the DOJ OIP FOIA regulation template. We note that these comments are beyond the scope of the proposed rule; as a matter of courtesy, we stress nonetheless that current § 1.553 specifically addresses the disclosure of records required by the FOIA. The section then separately addresses disclosure of records at VA discretion. Accordingly, we believe that § 1.553 is in keeping with the letter and spirit of the FOIA and requires no revision.

The third commenter also observed that proposed § 1.554(d) and the sections following it do not comply with the Department of Justice (DOJ) Office of Information Policy (OIP) template regarding requirements for making a request. The commenter also pointed out that § 1.554 does not contain language offering the services of a FOIA Public Liaison. In response to the allegation here and throughout this commenter's submission pertaining to VA's adherence to the OIP regulation template, VA responds that, as noted on the DOJ website, the OIP regulation template provides guidelines and sample language for agencies as they address the key elements of each section. The template does not require agencies to use the identical format or language in drafting its own agency regulations. Currently, we are revising VA's FOIA regulations to make them