



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0171]**

**RIN 1625-AA00**

**Safety Zone; Illinois River, Miles 0 to 187, Grafton, IL to Peoria, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is extending a temporary safety zone on the navigable waters of the Illinois River from mile marker (MM) 0 to MM 187 between Grafton, IL and Peoria, IL. 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 threaten 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 or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through July 7, 2019. For the purposes of enforcement, actual notice will be used from June 7, 2019, through [INSERT DATE OF PUBLICATION IN FEDERAL REGULATION]

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0171 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	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On May 5, 2019, Coast Guard Sector Upper Mississippi River received multiple reports from the Illinois State Emergency Operations Center and private citizens located along the Illinois River between mile marker (MM) 0 at Grafton, IL and MM 187 at Peoria, IL of water surge impacts from vessel traffic on the Illinois River overtopping levees resulting in damage to the levees and increased flooding. In response, on May 10, 2019, the Coast Guard published a temporary final rule titled *Safety Zone; Illinois River, Miles 0 to 187, Grafton, IL to Peoria, IL* (84 FR 20547). The safety zone was established on May 10, 2019 and is scheduled to expire on June 6, 2019.

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 (previously 33 U.S.C. 1231). The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with flood waters threaten to overtop levees along the river due to reports that vessel traffic in the affected area is causing water to overtop levees resulting in increased damage to the levees and flooding impacts to local communities and residential areas. 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 U.S. Army Corps of Engineers levees.

#### **IV. Discussion of the Rule**

Due to the ongoing flood along the Illinois River, Coast Guard Sector Upper Mississippi River in coordination with the U.S. Army Corp of Engineers determined river levels at which vessel traffic threatens to overtop or damage flood control levees located along the Illinois River between mile marker (MM) 0 at Grafton, IL and MM 187 at Peoria, IL. The COTP has determined that the sudden increase in flood waters approaching the tops of levees along the Illinois River poses a hazard to the safety of persons, vessels, and the marine environment as a result of floodwaters overtopping the levees. This rule extends the current temporary safety zone due to the unanticipated longevity of flooding conditions and establishes a temporary safety zone from June 7, 2019 until July 7, 2019, or until cancelled by the COTP, whichever occurs first. The safety zone will cover all navigable waters of the Illinois River from MM 0 to MM 187, 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 location, duration, and the emergency nature of the action. It extends the current safety zone established on navigable waters of the Illinois River from mile marker (MM) 0 to MM 187 between Grafton, IL and Peoria, IL for 30 days to deal with an ongoing flood in the area. Moreover, the Coast Guard will issue Local Notice to Mariners (LNMs), Marine Safety Information Bulletins (MSIBs), and BNM via VHF-FM marine channel 16 about the

zone. In addition, the rule allows vessels to seek permission to enter the zone on a case-by-case basis to minimize the impacts of this rule.

*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 Environmental Planning COMDTINST 5090.1 (series), 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 to vessels and persons on a one hundred eighty one mile stretch of the Illinois River that is experiencing significant flooding that is impacting levees. It is categorically excluded from further review under paragraph L60(d) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.. Because this regulation is for a temporary safety zone established to deal with an emergency, and which is longer than one week in duration, a Record of Environmental Consideration is not required at this time, but will be made available in the docket after the issuance of this rule 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, 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.T08-0171 to read as follows:

**§ 165.T08-0171 Safety Zone; Illinois River, Miles 0 – 187, Grafton, IL to Peoria, IL.**

(a) Location. The following area is a safety zone: all navigable waters of the Illinois River from mile marker (MM) 0 to MM 187, unless reduced in scope by the Captain of the Port Sector Upper Mississippi River (COTP) as flood conditions warrant.

(b) Effective period. This section is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through July 7, 2019. For the purposes of enforcement, actual notice will be used from June 7, 2019, through [INSERT DATE OF PUBLICATION IN FEDERAL REGULATION].

(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 Captain of the Port Sector Upper Mississippi River (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: May 31, 2019.

S. A. STOERMER,

CAPTAIN, U.S. Coast Guard,

Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2019-11960 Filed: 6/6/2019 8:45 am; Publication Date: 6/7/2019]