



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0959]**

**RIN 1625-AA00**

**Safety Zone; Illinois River, Mile Markers 91.5 and 28.3 (Frederick Light LLNR 7585 and Hurricane Island Upper Day Beacon LLNR 7980)**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters within one-tenth of a mile up and down river of Mile Marker (MM) 91.5 and Mile Marker (MM) 28.3 on the Illinois River. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by diving operations for salvage work. 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 December 30, 2019. For the purposes of enforcement, actual notice will be used from December 16, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the

docket, go to <https://www.regulations.gov>, type USCG-2019-0959 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 about this rulemaking, call or email Lieutenant Commander Christian Barger, Waterways Management Division, Sector Upper Mississippi River, 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	<b>Federal Register</b>
MM	Mile Marker
NPRM	Notice of proposed rulemaking
§	Section
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 of the very short notification of when the diving work on the Illinois River is due to take place. It is impracticable to publish an NPRM because we must establish this safety zone by December 16, 2019.

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 the effective date of this rule would be contrary to public interest because immediate action is necessary to respond to the potential safety hazards associated with the diving work to take place in the Illinois 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 dive operations starting December 16, 2019, will be a safety concern for anyone seeking to transit at MM 91.5 and MM 28.3 on the Illinois River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the diving takes place.

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

This rule establishes a safety zone which will be enforced for two days within the effective period from 7 a.m. through 1 p.m. or until dive operations are completed, whichever occurs sooner. The duration of the effective period is from December 16, 2019 to December 30, 2019 to allow for any potentially unsafe weather conditions that could delay the diving and salvage operations. The safety zone will cover all navigable waters of the Illinois River within one tenth of a mile up and down river of MM 91.5 and MM 28.3 extending the entire width of the river. This is necessary for divers and salvage equipment being used to complete work required to cut off old pilings below the water to recover the destroyed Coast Guard Aids to Navigation. The duration of the zone is

intended to protect personnel, vessels, and the marine environment in these navigable waters while the work is taking place. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The COTP or designated representative will notify the public of the actual enforcement dates by Broadcast Notice to Mariners, Locan Notice to Mariners and or Marine Safety Information Bulletin, 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 size, location, and duration of the safety zone. This safety zone impacts two small sections totaling less than a one mile stretch of the Illinois River for up to six hours over two days. Additionally, this rule allows 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 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 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 (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 call or email 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 call or email 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, Rev. 1, associated implementing instructions, 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 safety zone lasting only 6 hours on two days that will prohibit entry within the dive operations locations at MM 91.5 and MM 28.3 on the Illinois River. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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. Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0959 to read as follows:

**§ 165.T08-0959 Safety Zone; Illinois River, Mile Markers 91.5 and 28.3 (Frederick Light LLNR 7585 and Hurricane Island Upper Day Beacon LLNR 7980).**

(a) Location. The following area is a safety zone: all navigable waters of the Illinois River within one-tenth of a mile up and down river of mile marker (MM) 91.5 and MM 28.3 extending the entire width of the river.

(b) Effective period. This section is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 30, 2019. For the purposes of enforcement, actual notice will be used from December 16, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) Enforcement periods. This section will be enforced for up to six hours on two days during the effective period. This section will be enforced during diving operations from approximately 7 a.m. through 1 p.m. each day as needed.

(d) Regulations. (1) In accordance with the general regulations in §165.23, 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 designated representative.  
A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 314-269-2332 or on VHF-FM channel 16.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(e) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement dates and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone each day, through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: December 13, 2019.

S. A. Stoermer,

Captain, U.S. Coast Guard,

Captain of the Port Sector Upper Mississippi River.

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