



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[Docket Number USCG-2023-0229]

RIN 1625-AA00

Safety Zone; Illinois River Mile Markers 163.3 to 162.7, Peoria, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters in the Illinois Waterway at Mile Marker (MM) 162.7 through 163.3. The safety zone is needed to protect personnel, vessels, and the marine environment from all potential hazards associated with an aerial drone display. 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 from 8:45 p.m. through 10:15 p.m. on June 10, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0229 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Richard Cherkauer, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314-269-2560, email Richard.G.Cherkauer@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On February 3, 2023, the Peoria Parks District notified the Coast Guard that from 9 to 10 p.m. on June 10, 2023, it will be conducting an aerial drone entertainment display launched landside from Peoria Riverfront Park and flown over the Illinois River north of the Illinois River Bridge at MM 162.9. In response, on April 20, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Illinois River Mile Markers 163.3 to 162.7, Peoria, IL (88 FR 24375). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to aerial drone display. During the comment period that ended April 30, 2023, we received no comments.

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 impracticable because the event takes place on June 10, 2023 and immediate action is needed to protect personnel, vessels, and the marine environment from all potential hazards associated with the aerial drone display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the aerial drone event to be used in this June 10, 2023, display will be a safety concern for anyone within a half mile radius of the display. The purpose

of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 20, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 8:45 to 10:15 p.m. on June 10, 2023. The safety zone will cover all navigable waters from MM 162.7 through 163.3 in the Illinois River. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 to 10 p.m. aerial drone display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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. 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).

This regulatory action determination is based on safety concerns associated with an aerial drone display at MM 162.9 and the consequential safety zone located on the Illinois Waterway from MM 162.7 through 163.3 near Peoria, IL

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 received 00 comments from the Small Business Administration on this rulemaking. 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.

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 encompassing the width of the Illinois River from MM 162.7 through 163.3. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. 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: Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T08-0229 to read as follows:

§ 165.T08-0229 Safety Zone; Illinois River from MM 162.7 through 163.3,

Peoria, IL

(a) *Location.* The following area is a safety zone: all navigable waters within the Illinois River from MM 162.7 through 163.3.

(b) *Enforcement period.* This section will be subject to enforcement on June 10, 2023, from 8:45 p.m. to 10:15 p.m.

(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 or scope of the safety zone, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB) as appropriate.

Dated: May 20, 2023

A.R. Bender,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Upper Mississippi River.