

approval or authorization required by the member state to utilize such source(s).

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including, but not limited to, public water supply, wastewater discharge or other reclaimed waters, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s). The notice requirements related to agencies of member states, municipalities and counties contained in paragraph (f)(2) of this section, and the notice requirements contained in paragraph (f)(3) of this section, shall likewise be applicable to any request submitted hereunder.

#### Subpart D—Terms and Conditions of Approval

■ 3. In § 806.32, revise paragraph (a) to read as follows:

##### § 806.32 Reopening/modification.

(a) Once a project is approved, the Commission, upon its own motion, or upon petition of the project sponsor or any interested party, may at any time reopen any project approval and make additional orders or otherwise modify or impose such additional conditions that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever a petition for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a significant adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket. Notwithstanding the foregoing, any petition filed by a party who previously sought the same or functionally equivalent relief identified in the petition pursuant to the administrative appeals process under § 808.2 will not be eligible for consideration by the Commission absent new facts not known or readily discernable at the time of consideration of the petitioner's previous request for administrative appeal filed pursuant to § 808.2.

\* \* \* \* \*

#### PART 808—HEARINGS AND ENFORCEMENT ACTIONS

■ 4. The authority citation for Part 808 continues to read as follows:

**Authority:** Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Public Law 91–575, 84 Stat. 1509 *et seq.*

##### Subpart A—Conduct of Hearings

■ 5. In § 808.1, revise paragraphs (a)(2) and (c) to read as follows:

##### § 808.1 Public hearings.

(a) \* \* \*

(2) Proposed rulemaking.

\* \* \* \* \*

(c) Notice of public hearing. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission Web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, the Commission shall convene at least one public hearing on any proposed rulemaking it approves for public review and comment. For any such hearing(s), notices need only be forwarded to the directors of the New York Register, the Pennsylvania bulletin, the Maryland Register and the **Federal Register**, and it is sufficient that this notice appear only in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

■ 6. In § 808.2, revise paragraph (a) to read as follows:

##### § 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director may file a written appeal requesting a hearing. Except with respect to project approvals or denials, such appeal shall be filed with the Commission within 30 days of the action or decision. In the

case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the **Federal Register**.

\* \* \* \* \*

Dated: September 16, 2009.

**Thomas W. Beauduy,**  
Deputy Director.

[FR Doc. E9–23281 Filed 9–28–09; 8:45 am]

BILLING CODE 7040–01–P

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 110

[Docket No. USCG–2009–0854]

RIN 1625–AA01

##### Special Anchorage Areas; Henderson Harbor, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Coast Guard removes a note which states from whom one must obtain permission to moor or anchor in the special anchorage areas of Henderson Harbor, NY.

**DATES:** This rule is effective on September 29, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0854 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0854 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Lieutenant Michael C. Petta, Ninth District Legal Office, Coast Guard, telephone 216–902–6010, e-mail [michael.c.petta@uscg.mil](mailto:michael.c.petta@uscg.mil). If you have questions on obtaining permission to moor or anchor in the special anchorage areas of Henderson Harbor, NY, call the Town Board, telephone 315–938–5542. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

The Coast Guard is issuing this final 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 this amendment is minor and merely technical in nature in that it simply removes the note which states one must obtain permission from the Town of Henderson Harbormaster to moor or anchor in the special anchorage areas of Henderson Harbor, NY. Notice and comment is unnecessary because, as discussed below, the local ordinance has changed such that the Harbormaster no longer receives requests to moor or anchor.

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**. Good cause exists because the local ordinance has changed such that the Harbormaster no longer receives requests to moor or anchor, and leaving the note in place would provide inaccurate information.

## Background and Purpose

On June 11, 2009, the Town of Henderson Harbor revised its boating ordinance. One result of that revision is that the town’s harbormaster is no longer the party from whom one obtains permission to moor or anchor in the Henderson Harbor special anchorage areas. This rule responds to the town’s request to remove from 33 CFR 110.87 the note which states that the town’s harbormaster is the party from whom one must obtain permission.

## Discussion of Rule

This rule contains no new provisions. Neither does it amend or remove any substantive provisions. Instead, this rule merely removes from 33 CFR 110.87 the note which states that the town’s harbormaster is the party from whom one must obtain permission to moor or anchor in the Henderson Harbor, NY special anchorage areas. This change is necessary because the town of Henderson Harbor recently revised its boating laws to include removing its

harbormaster as the permit granting party.

## Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

## Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not considered a significant regulatory action because the removal of the town’s harbormaster as the party from whom one must obtain permission to moor or anchor in the Henderson Harbor special anchorage areas is a minor, non-substantive, and administrative change.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to moor or anchor in either of the special anchorage areas in Henderson Harbor, NY.

The removal of the town’s harbormaster as the party from whom one must obtain permission to moor or anchor in the Henderson Harbor special anchorage areas will not have a significant economic impact on a substantial number of small entities because this rule is a minor, technical change to the regulation. It does not alter the size or character of the special anchorage areas.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in

understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

## Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## 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 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.

## Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

## Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined

that this rule and fishing rights protection need not be incompatible. We have also determined that this proposed 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this 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 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(a), of the Instruction. This rule involves the promulgation of a procedural regulation, in that it merely removes the Henderson Harbor's harbormaster as the party from whom one must obtain permission to moor or anchor in the harbor's special anchorage areas. This rule does not alter the size or character of the special anchorage areas. Under figure 2-1, paragraph (34)(a), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

#### PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

#### § 110.87 [Amended]

■ 2. In § 110.87, remove the Note.

Dated: September 17, 2009.

**D.R. Callahan,**

*Captain, U.S. Coast Guard, Commander,  
Ninth Coast Guard District, Acting.*

[FR Doc. E9-23390 Filed 9-28-09; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0884]

RIN 1625-AA11

#### Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone and regulated

navigation area on the Chicago Sanitary and Ship Canal near Romeoville, IL. This temporary final rule places navigational and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' (USACE) electrical dispersal fish barrier system.

**DATES:** This temporary final rule is effective from 5 p.m. on September 29, 2009, until 5 p.m. on October 16, 2009. This temporary final rule is enforceable with actual notice by Coast Guard personnel beginning September 18, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0884 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0884 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216-902-6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

The Coast Guard is issuing this temporary final 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 the U.S. Army Corps of Engineers (USACE) made the decision, without time for a proper notice period, to permanently increase the voltage of the fish barrier to two-volts per inch in response to data which indicates that Asian carp are closer to the Great Lakes waterway system than originally thought. The electric current in the water created by the electrical dispersal barriers coupled