

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-1080]

RIN 1625-AA11, 1625-AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing both a safety zone and a Regulated Navigation Area (RNA) on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This temporary interim rule places navigational, environmental 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: *Effective Date:* In this rule, § 165.T09-1004 is removed, effective January 6, 2010. Section 165.923 is suspended, and a new temporary section, § 165.T09-1080, is added in the CFR effective January 6, 2010 until 5 p.m. on December 1, 2010. This rule is effective with actual notice for purposes of enforcement beginning at 5 p.m. on December 18, 2009.

Comment Date: Comments and related material must reach the Docket Management Facility on or before February 5, 2010.

ADDRESSES: You may submit comments identified by docket number USCG-2009-1080 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for Comments."

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary 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:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-1080), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2009-1080" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-1080 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor

of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before January 29, 2009 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is issuing this temporary interim 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." For the reasons discussed below, 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 based upon data which indicates that Asian carp are much closer to the Great Lakes waterway system than originally thought. The possibility exists that vessels will transport Asian carp eggs, gametes or juvenile fish safely through the electrical dispersal barrier in water attained south of the fish barrier that is then transported and discharged on the other side of the barrier. The Asian carp are the subject of an ongoing multi-agency study aimed at preventing their introduction into the great lakes. The proposed temporary safety zone and RNA will allow that multi-agency effort to progress towards its goal of protecting people, vessels, and the environment from the hazards associated with the

possible introduction of invasive species such as Asian carp into the Great Lakes.

As such, the USCG must take immediate steps in order to prevent possible introduction of Asian carp before the ongoing effort can be completed. Therefore, it would be against the public interest to delay the issuing of this rule. Additionally, for the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(3).

RNA Good Cause Discussion

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the CSSC. The demonstration barrier, commonly referred to as "Barrier I," generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal. In 2006, the USACE completed construction of a new barrier, "Barrier IIA." Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the CSSC, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to energize the barrier to two-volts per inch without prior testing.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008 by the USACE at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level. The Coast Guard and USACE developed regulations and safety guidelines, with stakeholder input, which addressed the risks and hazards associated with operating the barriers at the one-volt per inch level. These regulations were published in 33 CFR § 165.923, 70 FR 76692 (Dec 28, 2005) and in a series of temporary final rules published in the **Federal Register**: 71 FR 4488 (Jan 27, 2006); 71 FR 19648

(Apr 17, 2006); 73 FR 33337 (Jun 12, 2008); 73 FR 37810 (Jul 2, 2008); 73 FR 45875 (Aug 7, 2008); and 73 FR 63633 (Oct 27, 2008).

In early August, 2009, the USACE notified the Coast Guard that it planned to immediately increase the voltage of Barrier IIA to two-volts per inch on a full-time basis starting August 17, 2009. Both Barrier IIA and Barrier I will operate at the same time; hence, Barrier I will provide a redundant back-up to Barrier IIA.

In the past, the Coast Guard advised the USACE that it has no objection to the activation of Barrier IIA and Barrier I at a maximum strength of one-volt per inch. Testing on commercial vessels transiting the canal over the fish barrier was conducted at one volt per inch indicating that although the barriers create risks to people and vessels, those risks could be mitigated by following certain procedures. These mitigation procedures for the barrier operating at one volt per inch were implemented in a temporary interim rule establishing an RNA and a safety zone that was published in the **Federal Register** on February 9, 2009 (74 FR 6352), as well as an NPRM published in the **Federal Register** on May 26, 2009 (74 FR 24722).

However, both of these rulemakings reflected the prior operating parameters of the dispersal barriers and contemplated further testing of the effects of higher voltages on commercial and recreational vessels as well as people. The USACE began safety testing in consultation with the U.S. Coast Guard on August 17, 2009, to test various configurations of commercial tugs and barges as well as recreational vessels with non-conductive hulls passing through the barriers at increased voltage and operating parameters. Because the USACE decided that the voltage and operating parameters had to be immediately increased prior to the completion of safety testing, the USCG determined that temporary closure of the canal to all vessels through a safety zone was necessary until the risks were better understood. This resulted in successive temporary final rules that suspended the prior temporary interim rule. These temporary final rules enacting safety zones were published in the **Federal Register** on August 26, 2009 (74 FR 43055), September 2, 2009 (74 FR 45318), September 29, 2009 (74 FR 49815), and November 13, 2009 (74 FR 58545).

Testing and analysis of the risks to persons and vessels are ongoing. Until those risks are well understood, immediate action is needed to prevent injury to people and vessels from effects of Barrier IIA. As a result, it is contrary

to the public interest to provide a full notice and comment period prior to implementation of, or to delay the effective date of, the RNA included in this rule.

Safety Zone Good Cause Discussion

In November 2009, the USACE made an announcement that it had discovered environmental deoxyribonucleic acid (e-dna) from Asian carp north of the fish barrier. This discovery indicates that Asian carp are living in the waterways north of the fish barrier in the Cal-Sag Channel but south of the O'Brien Locks. Under 50 CFR part 16, Asian carp are listed as an injurious species of fish and as such are illegal for interstate transportation. A permit is required to transport all viable eggs, gametes, as well as live Silver or Asian carp. Historically, vessels, including barges, have taken on water south of the barrier and transported it across the fish barriers, either knowingly or unknowingly, as bilge, ballast, or other non-potable water. This practice is considered a possible bypass vector for transporting Asian carp eggs or juvenile fish from south of the barrier to north of the barrier. Immediate action is needed to halt this practice, thereby closing down this possible bypass vector. For this reason, providing a full notice and comment period and delaying the effective date for the safety zone including in this temporary interim rule would be contrary to the public interest.

Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the CSSC. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA is up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for approximately

seven weeks in September and October 2009, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is planned; Barrier IIB would augment the capabilities of Barriers I and IIA.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of Barrier I. During subsequent USACE safety testing, sparking was observed at points where metal-to-metal contact occurred between two barges in the barrier field.

The electric current in the water also poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU final report concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

A Safety Work Group facilitated by the Coast Guard and in partnership with the USACE and industry initially met in February 2008 and focused on three goals: (1) Education and public outreach, (2) keeping people out of the water, and (3) egress/rescue efforts. The Safety Work Group has regularly been attended by eleven stakeholders, including industry representatives such as the American Waterways Operators and Illinois River Carriers Association, the Army Corps of Engineers Chicago District, Coast Guard Marine Safety Unit Chicago, Coast Guard Sector Lake Michigan/Captain of the Port Lake Michigan, and the Ninth Coast Guard District.

Based on the safety hazards associated with electric current flowing through navigable waterways and the uncertainty of the effects of higher voltage on people and vessels that pass over and adjacent to the barriers, the Coast Guard is implementing operational restrictions, via an RNA, on vessels until proper testing and analysis of such testing can be completed by the USACE. The Coast Guard appreciates the commercial significance of this waterway and will work closely with the USACE to reduce operational restrictions as soon as possible; however, it is imperative that the RNA be immediately enacted to avoid loss of life.

On December 2, 2009, rotenone, a fish toxicant, was applied to approximately six miles of the CSSC while barrier maintenance was conducted to ensure no fish were able to transit the barrier.

One Silver Carp was found in the area immediately south of the barrier. Similarly e-dna was detected north of the barrier, in an area of the Cal-Sag Channel immediately below the O'Brien Locks and at the confluence of the Cal-Sag Channel and the CSSC. This e-dna detects the presence of Carp, but in the subsequent fishing operations, we were not able to determine a number or mass of the fish present.

Affected parties are reminded that the USACE may again raise the operating parameters of the fish barrier in response to ongoing tests regarding the effectiveness of the barrier on the Asian carp. In addition, when USACE activates barrier IIB, additional testing will be necessary to ensure the safety of vessels. If this occurs, it is possible that fewer vessels will be given permission to enter the RNA and safety zone until further safety testing and analysis can be completed and current timelines for a final rule will be extended.

Discussion of Rule

This temporary interim rule removes 33 CFR 165.T09-1004, the last temporary rule published to address risks associated with Barrier IIA and the application of rotenone to the CSSC. This rule also suspends 33 CFR 165.923 until 5 p.m. on December 1, 2010. This rule places an RNA on all waters located adjacent to, and over, the electrical dispersal barriers on the CSSC between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge). It also places a safety zone over a smaller portion of these same waters. The RNA and safety zone will be enforced at all times until the USACE suspends operation of the electrified fish barrier and the Asian carp are no longer deemed an environmental threat to the Great Lakes. This temporary rule is to remain in effect until December 1, 2010 in order to allow sufficient time for the Coast Guard to publish a final rule based on comments received from the public in response to this temporary interim rule. At the same time, the Coast Guard expects the USACE to energize barrier IIB, which is likely to require additional safety testing. This RNA and safety zone are also required during that testing period to prevent the possible loss of life and damage to property.

The RNA encompasses all waters of the Chicago Sanitary and Ship Canal located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge). The requirements placed on all vessels

include: (1) Vessels must be greater than twenty feet in length; (2) Vessel must not be a personal watercraft of any kind (i.e., jet skis, wave runners, kayak, etc.); (3) All up-bound and down-bound commercial tows that consist of barges carrying flammable liquid cargos (grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the RNA; (4) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements on either side; (5) Commercial tows transiting the RNA must only be made up with wire rope to ensure electrical connectivity between all segments of the tow; (6) All vessels are prohibited from loitering in the RNA; (7) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit; (8) All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA; (9) All personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device; (10) Vessels may not moor or lay up on the right or left descending banks of the RNA; and, (11) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

This temporary final rule places additional restrictions on all vessels transiting a safety zone that encompasses a smaller portion of the CSSC. The safety zone consists of all the waters of the CSSC located between 270 feet south of the Romeo Road Bridge (mile marker 296.1) to the south side of the aerial pipeline (mile marker 296.7). Vessels are prohibited from transiting the safety zone with non-potable water on board in any space except for water on board that will not be discharged on the other side of the safety zone. Vessels must notify and obtain permission from the Captain of the Port Sector Lake Michigan prior to transiting the safety zone if they intend to discharge any non-potable water attained on one-side of the safety zone on the other side of the zone. This includes water in void spaces being unintentionally introduced through cracks or other damage to the hull. The Captain of the Port Sector Lake Michigan maintains a telephone

line that is manned 24 hours a day, seven days a week. The public can obtain information concerning information about the RNA and safety zone by contacting the Captain of the Port Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

These restrictions are necessary for safe navigation of the RNA and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during safety tests conducted by the USACE. They are also necessary to protect from the harms presented by a potential invasion of Asian carp in Lake Michigan. Deviation from this temporary final rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. The Commander, Ninth Coast Guard District designates Captain of the Port Sector Lake Michigan and Commanding Officer, Marine Safety Unit Chicago, as his designated representatives for the purposes of the RNA.

The Captain of the Port Sector Lake Michigan retains the authority to permit vessels to enter the safety zone. As safety testing results continue to be analyzed and become available, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to pass for which there is a decrease of known risk of injury or property damage. If vessels wish to enter the safety zone they must receive permission from the Captain of the Port Sector Lake Michigan to do so and must follow all orders from the Captain of the Port Sector Lake Michigan or her designated representative while in the zone.

If, for any reason, the safety zone or RNA are at any time suspended, the Captain of the Port Lake Michigan will cause notice of the enforcement of the safety zone and/or RNA to be made by all appropriate means to effect the widest publicity among the affected segments of the public.

Regulatory Analyses

We developed this temporary interim 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.

Because this regulated navigation area and safety zone must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time.

This rule will affect commercial traffic transiting the electrical dispersal fish barrier system and surrounding waters. The ACOE maintains data about the commercial vessels using the Lockport Lock and Dam, which provides access to the proposed RNA. According to ACOE data, the commercial traffic through the Lockport Lock consisted of 147 towing vessels and 13,411 barges during 2007. Of those, 96 towing vessels and 2,246 barges were handling red flag cargo (i.e., those carrying hazardous, flammable, or combustible material in bulk).

Recreational vessels will also be affected under this rule. According to ACOE data, recreational vessels made up 66 percent of the usage of the Lockport Lock and Dam in 2007. Operation and maintenance of the ACOE fish barrier will continue to affect recreational vessels as they have in the past. The majority of these vessels will still be able to transit the RNA under this rule. The potential cost associated with this rule will include bow boat assistance for red flag vessels and the potential cost associated with possible delays or inability to transit the RNA for those vessels transporting non-potable water attained on one side of the barrier for discharge on the other.

Operators have been using bow boat assistance, under prior temporary rules, to mitigate the risk posed by the electrical dispersal fish barrier system operated by ACOE. Based on information from the Ninth Coast Guard District, several tow boat operators are already refraining from permitting the discharge of non-potable water attained on one side of the barrier to the other.

We expect some provisions in this rule will not result in additional costs. These include loitering, mooring and PFD requirements. Similar to prior temporary rules, vessels are prohibited from mooring or loitering in the RNA and all personnel in the RNA on open decks are required to wear a Coast Guard approved Type I personal flotation device. Most commercial and recreational operators will have required flotation devices on board as a result of other requirements and common safe boating practices. Based on the past temporary rules, we observed no information and received no data to confirm there were additional costs as a result of these provisions.

In addition, the initial test results at the current operating parameters of two volts per inch indicate that the majority of commercial and recreational vessels that regularly transit the CSSC will be permitted to enter the regulated navigation area and safety zone under certain conditions. Those vessels that will not be permitted to pass through the barrier may be permitted, on a case by case basis, to pass via a dead ship tow by a commercial vessel that is able to transit.

We expect the benefits of this rule will mitigate marine safety risks as a result of the operation and maintenance of the fish barriers by the ACOE. This rule will allow commerce to continue through the waters adjacent to and over these barriers. This rule will also mitigate the possibility of an Asian Carp introduction into Lake Michigan, and the Great Lakes system, as a result of commerce through the CSSC.

At this time, based on available information from past temporary rules, we anticipate that this rule will not be economically significant under Executive Order 12866 (i.e., have an annual effect on the economy of \$100 million or more). The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of this temporary interim rule. Comments can be made online by following the procedures outlined above in the **ADDRESSES** section.

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) requires agencies to consider whether regulatory actions 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. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

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.

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.

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 these regulations and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian tribes that have questions concerning the provisions of this 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 temporary 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 that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2-1, paragraph (34)(g), as well as paragraph (27) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of regulated navigation areas and security or safety zones. This temporary rule will assist the aforementioned multi-agency effort to research and manage the possible impact of the Asian carp on the Great Lakes. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.T09-1004 [Removed]

■ 2. Remove § 165.T09-1004.

§ 165.923 [Suspended]

■ 3. Suspend § 165.923 from January 6, 2010 until 5 p.m. on December 1, 2010.

■ 4. Add new temporary § 165.T09–1080 as follows:

§ 165.T09–1080 Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.(a) *Safety Zone.*

(1) The following area is a temporary safety zone: All waters of the CSSC located between mile marker 296.1 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(2) *Regulations.*

(i) All vessels are prohibited from transiting the safety zone with any non-potable water on board if they intend to release that water in any form within, or on the other side of the safety zone. Non-potable water includes but is not limited to any water taken on board to control or maintain trim, draft, stability or stresses of the vessel, or taken on board due to free communication between the hull of the vessel and exterior water. Potable water is water treated and stored aboard the vessel that is suitable for human consumption.

(ii) Vessels with non-potable water onboard are permitted to transit the safety zone if they have taken steps to prevent the release of that water in any form, in or on the other side of, the safety zone, or alternatively if they have plans to dispose of the water in a biologically sound manner.

(iii) Vessels with non-potable water aboard that intend to discharge on the other side of the zone must contact the COTP, her designated representative or her on-scene representative and obtain permission to transit and discharge prior to transit. Examples of discharges that may be approved by the COTP include plans to dispose of the water in a biologically sound manner or demonstrate through testing that the non-potable water does not contain potential live Silver or Asian carp, or viable eggs or, gametes from these carp.

(iv) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone by vessels with non-potable water on board is prohibited unless authorized by the Captain of the Port Lake Michigan, her designated representative, or her on-scene representative.

(v) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the

Captain of the Port Lake Michigan to act on her behalf. The on-scene representative of the Captain of the Port Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio or loudhailer. The Captain of the Port Lake Michigan or her on-scene representative may also be contacted via VHF–FM radio Channel 16 or through the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

(b) *Regulated Navigation Area.* (1) The following is a regulated navigation area (RNA): All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge).

(2) *Regulations.*

(i) The general regulations contained in 33 CFR 165.13 apply.

(ii) Vessels that comply with the following restrictions are permitted to transit the RNA:

(A) All up-bound and down-bound barge tows that consist of barges carrying flammable liquid cargos (Grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the RNA.

(B) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements.

(C) Commercial tows transiting the RNA must be made up with only wire rope to ensure electrical connectivity between all segments of the tow.

(D) All vessels are prohibited from loitering in the RNA.

(E) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA.

(F) Except for law enforcement and emergency response personnel, all personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device.

(G) Vessels may not moor or lay up on the right or left descending banks of the RNA.

(H) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

(I) Persons on board any vessel transiting this RNA in accordance with this rule or otherwise are advised they do so at their own risk.

(c) *Definitions.* The following definitions apply to this section:

Bow boat means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the RNA. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

Designated representative means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

Vessel means every description of watercraft or other artificial contrivance used, or capable or being used, as a means of transportation on water. This definition includes, but is not limited to, barges.

(d) *Enforcement Period.* The regulated navigation area and safety zone will be enforced from 5 p.m. on December 18, 2009, until 5 p.m. on December 1, 2010. This regulated navigation area and safety zone are enforceable with actual notice by Coast Guard personnel beginning December 18, 2009, until January 6, 2010.

(e) *Compliance.* All persons and vessels must comply with this section and any additional instructions or orders of the Ninth Coast Guard District Commander, or his designated representatives. Any person on board any vessel transiting this RNA in accordance with this rule or otherwise does so at their own risk.

(f) *Waiver.* For any vessel, the Ninth Coast Guard District Commander, or his designated representatives, may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

Dated: December 18, 2009.

Peter V. Neffenger

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

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