PART 183—BOATS AND ASSOCIATED EQUIPMENT

§ 183.3(b) Remove Add

181.33(b) ............................................................. 2100 Second Street, SW., Washington, DC 20593–0001.

181.33(b) ............................................................. 2100 2nd St., SW., Stop 7581, Washington, DC 20593–7581.

Comment Period: Comments and related material must reach the Docket Management Facility on or before August 24, 2010.

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


(2) Fax: 202–493–2251.


(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 Commander 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 8 ½ 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 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, gameotes, 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

For additional discussion of the good
case surrounding the issuance of the
safety zone and RNA being revised by
this rule, refer to the issuance of the
initial temporary final rule on January 6, 2010 (75 FR 754).

Background and Purpose

The discussion that follows was published previously in the initial
temporary final rule on January 6, 2010 (75 FR 754).

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as
amended by the National Invasive Species Act of 1996, authorized the United States Army Corps of Engineers (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 Chicago Sanitary and Ship
Canal (CSSC). The USACE selected an
electric barrier because it is a non-lethal
deterrent with a proven history, which
does not overtly interfere with
temperature 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
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
indicates the potential 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

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
different vessels will be given permission
to enter the RNA and safety zone until
further safety testing and analysis can be
done and current timelines for a
final rule will be extended.

Discussion of Rule

This temporary interim rule amends
33 CFR 165.109–1080. Issued on January 6, 2010 (75 FR 759), which
established a safety zone and RNA on
the waters of the CSSC. The purpose of
this rule is to change the area sizes of
the safety zone and RNA, and to place
additional restrictions on vessels that
may transit the RNA. This rule amends
This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

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.

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 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 13045, 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
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.

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 M16475.1D, 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 RECORD KEEPING 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:


2. In §165.T09–1080, revise paragraphs (a)(1) and (b)(1), and add paragraphs (b)(2)(ii)(J) and (b)(2)(ii)(K) to read as follows:

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

(a) * * * *(1) The following area is a temporary safety zone: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 296.1 (approximately 450 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).

* * * * * *(b) * * * *(1) The following is a regulated navigation area (RNA): All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.5 (approximately 3600 feet south of the Romeo Road Bridge) and mile marker 297.2 (approximately 0.5 miles north of the pipeline arch).

* * * * *(2) * * * *(J) Vessels must be greater than twenty feet in length.

(K) Vessels must not be a personal watercraft of any kind (e.g. jet skis, wave runners, kayaks, etc.).

* * * * *


M. N. Parks,
Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2010–15398 Filed 6–24–10; 8:45 am]

BILLING CODE 9110–04–P