

to latitude 45°39'02.10" N, longitude 122°45'21.67" W; thence continuing east-southeasterly to latitude 45°38'59.15" N, longitude 122°45'16.38" W; thence continuing southwesterly to latitude 45°38'51.03" N, longitude 122°45'25.57" W; thence continuing westerly to latitude 45°38'51.54" N, longitude 122°45'26.35" W; thence continuing northwesterly to latitude 45°39'06.27" N, longitude 122°45'40.50" W; thence continuing north-northeasterly to the beginning point.

(9) *Upper Vancouver Anchorage.* An area enclosed by a line beginning north-northeast of Hayden Island at latitude 45°38'43.44" N, longitude 122°44'39.50" W; thence continuing northeasterly to 45°38'26.98" N, longitude 122°43'25.87" W; thence continuing east-northeasterly to latitude 45°38'17.31" N, longitude 122°42'54.69" W; thence continuing easterly to latitude 45°38'12.40" N, longitude 122°42'43.93" W; thence continuing east-southeasterly to latitude 45°37'40.53" N, longitude 122°41'44.08" W; thence continuing south-southeasterly to latitude 45°37'36.11" N, longitude 122°41'48.86" W; thence continuing west-southwesterly to latitude 45°37'52.20" N, longitude 122°42'19.50" W; thence continuing west-southwesterly to latitude 45°38'10.75" N, longitude 122°43'08.89" W; thence continuing southwesterly to latitude 45°38'18.79" N, longitude 122°43'44.83" W; thence continuing westerly to latitude 45°38'41.37" N, longitude 122°44'40.44" W; thence continuing northeasterly to the point of beginning.

(10) *Cottonwood Island Anchorage.* An area enclosed by a line beginning west-southwest of Longview, WA at latitude 46°05'56.88" N, longitude 122°56'53.19" W; thence continuing easterly to latitude 46°05'14.06" N, longitude 122°54'45.71" W; thence continuing east-southeasterly to latitude 46°04'57.12" N, longitude 122°54'12.41" W; thence continuing southeasterly to latitude 46°04'37.55" N, longitude 122°53'45.80" W; thence continuing southeasterly to latitude 46°04'13.72" N, longitude 122°53'23.66" W; thence continuing southeasterly to latitude 46°03'54.94" N, longitude 122°53'11.81" W; thence continuing southerly to latitude 46°03'34.96" N, longitude 122°53'03.17" W; thence continuing westerly to latitude 46°03'32.06" W, longitude 122°53'19.68" N; thence continuing north-northwesterly to latitude 46°03'50.84" N, longitude 122°53'27.81" W; thence continuing northwesterly to latitude 46°04'08.10" N, longitude 122°53'38.70" W; thence continuing northwesterly to latitude 46°04'29.41" N, longitude 122°53'58.17" W; thence continuing north-

northwesterly to latitude 46°04'49.89" N, longitude 122°54'21.57" W; thence continuing northwesterly to latitude 46°05'06.95" N, longitude 122°54'50.65" W; thence continuing northwesterly to latitude 46°05'49.77" N, longitude 122°56'8.12" W; thence continuing east-northeasterly to the point of the beginning.

(b) *Regulations.* (1) All designated anchorages are intended for the primary use of deep-draft vessels over 200 feet in length.

(2) If a vessel under 200 feet in length is anchored in a designated anchorage, the master or person in charge of the vessel shall:

(i) Ensure that the vessel is anchored so as to minimize conflict with large, deep-draft vessels utilizing or seeking to utilize the anchorage; and

(ii) Move the vessel out of the area if requested by the master of a large, deep-draft vessel seeking to enter or depart the area or if directed by the Captain of the Port.

(3) Vessels desiring to anchor in designated anchorages shall contact the pilot office that manages that anchorage to request an appropriate position to anchor. Columbia River Bar Pilots manage Astoria North Anchorage and Astoria South Anchorage. Columbia River Pilots manage all designated anchorages upriver from Astoria.

(4) No vessel may occupy a designated anchorage for more than 30 consecutive days without permission from the Captain of the Port.

(5) No vessel being layed-up or dismantled or undergoing major alterations or repairs may occupy a designated anchorage without permission from the Captain of the Port.

(6) No vessel carrying a Cargo of Particular Hazard listed in § 126.10 of this chapter may occupy a designated anchorage without permission from the Captain of the Port.

(7) No vessel in a condition such that it is likely to sink or otherwise become a hazard to the operation of other vessels shall occupy a designated anchorage except in an emergency, and then only for such periods as may be authorized by the Captain of the Port.

(8) Vessels anchoring in Astoria North Anchorage should avoid placing their anchor in the charted cable area.

Dated: May 8, 2009.

J.P. Currier,

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

[FR Doc. E9-12060 Filed 5-22-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-1247]

RIN 1625-AA11

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a regulated navigation area and safety zone on the Chicago Sanitary and Ship Canal near Romeoville, Illinois. This proposed regulated navigation area and safety zone places navigational and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the Army Corps of Engineers electrical dispersal fish barrier system.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before July 27, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-1247 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" portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule call LT Ann Henkelman, Waterways Management Branch, Ninth Coast Guard District, telephone 216-902-6288. If you have questions on viewing or submitting material to 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–2008–1247), 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 phone 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–2008–1247” 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 the 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–2008–1247 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit 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 all 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 to the Docket Management Facility at the address under **ADDRESSES** explaining why one 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**.

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 Army Corps of Engineers (Army Corps) 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. The Army Corps selected an electric barrier because it is a non-toxic deterrent with a proven history and also does not overtly interfere with navigation in the canal.

In April 2002, the Army Corps energized a demonstration electrical dispersal barrier located in the Chicago Sanitary and Ship Canal approximately 30 miles from Lake Michigan. The demonstration barrier, commonly referred to as “Barrier I,” generates a low-voltage electric field (a maximum of approximately one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. The electric field is created by pulsing low voltage DC current through steel cables secured to the bottom of the canal. 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 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 the Barrier I. During subsequent Army Corps safety testing in January 2005, sparking was observed upon

metal-to-metal contact between two independent barges in the barrier field.

In 2006, the Army Corps completed construction of a second barrier, “Barrier IIA.” Barrier IIA was constructed 800 to 1300 feet downstream of the Barrier I. Barrier IIA is designed to operate continuously at one-volt per inch, and can operate at higher levels. Because of its design, Barrier IIA can generate a more powerful electric field, over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I. The potential field strength for Barrier IIA will be 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 2008, 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.

The electric current in the water 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. This comprehensive, independent analysis of Barriers I and IIA, conducted in 2008, 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. 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. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level. Operating Barrier IIA at four-volts per inch (the maximum capacity) presents a higher risk; however, there is no data yet to indicate how much higher.

A Safety Work Group facilitated by the Coast Guard and in partnership with the Army Corps 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. Eleven stakeholders have regularly attended the Safety Work Group. Key partners include the American Waterways Operators; Illinois River Carriers Association; Army Corps, Chicago District, Coast Guard Marine Safety Unit Chicago; Coast Guard Sector Lake Michigan; and the Ninth Coast Guard District. During the past 12 months, the Coast Guard has hosted 5 Safety Work Group meetings with full participation from stakeholders. The

Coast Guard and the Army Corps 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: 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.

The Army Corps notified the Coast Guard in December 2008, that it planned to activate Barrier IIA on a full-time basis starting in middle to late January 2009. Due to technical issues, Barrier IIA was not activated until April 8, 2009. Both Barrier IIA and Barrier I are operating at the same time. Operation of both Barrier I and Barrier IIA at the same time provides a back up should one barrier cease to operate.

The Coast Guard advised the Army Corps in December 2008, that it had no objection to the Army Corps activating Barrier IIA at a maximum strength of one-volt per inch, which is the operating strength of Barrier I. In addition, the Coast Guard advised the Army Corps that it did not object to the Army Corps' plans for additional testing of Barrier IIA at peak field strength of up to four-volts per inch. Peak field strength tests are necessary to evaluate safety risks to mariners and their vessels when Barrier IIA is operated at a higher voltage.

Based on the commercial significance and successful transit history of the Barrier I by thousands of barges since its inception in April 2002, and Barrier IIA during Fall 2008, the Coast Guard has not chosen to close the waterway despite the proven electrical discharge hazard and additional safety concerns. Tows spanning Barrier IIA and the coal-fired power plant barge loading area just south of the regulated navigation area remain a concern. Accordingly, because of the safety risks involved, it is imperative that the Coast Guard implements increased safety measures for the operation of both Barriers I and IIA.

To mitigate the safety risks created by operation of both barriers, the Coast Guard established a temporary interim rule (TIR) on January 16, 2009, which placed navigational and operational restrictions on all vessels transiting through a regulated navigation area located adjacent to and over the barriers. 33 CFR 165.T09-1247, 74 FR 6357, Feb. 9, 2009. The TIR public comment period closed on April 10, 2009. To date, no

comments have been received regarding the TIR.

This notice of proposed rulemaking (NPRM) proposes establishment of permanent regulations, similar to the regulations contained in the TIR. Like the TIR, this rule proposes placement of navigational and operational restrictions on all vessels transiting through a regulated navigation area located adjacent to and over the barriers. Specifically, the Coast Guard proposes requiring vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements. In addition, the Coast Guard will occasionally enforce a safety zone, which prohibits the movement of all vessels and persons through the electrical dispersal barriers during tests or other periods of time that Barrier IIA is operated at voltages higher than one-volt per inch.

To view the TIR, this NPRM, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG-2008-1247) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Discussion of Proposed Rule

This rule proposes removal of 33 CFR 165.923 and 33 CFR 165.T09-1247. This rule proposes establishment of permanent regulations, which would place navigational and operational restrictions on all vessel transits through the navigable waters located adjacent to and over the electrical dispersal barriers located on the Chicago Sanitary and Ship Canal. The regulated navigation area 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 commercial vessels include: (1) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions; (2) vessels engaged in commercial service must work out passing arrangements prior to entering the regulated navigation area and may only

pass (meet or overtake) another vessel outside of the regulated navigation area; (3) commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow; and (4) all up-bound and down-bound barge tows that contain one or more red flag barges must be assisted by a bow boat until the entire tow is clear of the regulated navigation area. The Army Corps has informed the Coast Guard that the Army Corps will continue to contract bow boat assistance for barge tows containing one or more red flag barges through the remainder of the current fiscal year (*i.e.*, through September 30, 2009). The Army Corps has informed the Coast Guard that it will request funds for bow boat assistance in its fiscal year 2010 budget request. However, because of the federal budget process, there is currently no way to determine if those funds will be appropriated. In the event Army Corps funding would cease, operators of tows containing one or more red flag barges that need to transit through the regulated navigation area would incur the cost of bow boat assistance. Operators of tows containing one or more red flag barges must notify the bow boat contractor at least two hours prior to the need for assistance. The tow operator must then remain in contact with the contractor after the initial call for bow boat assistance and advise the contractor of any delays.

Red flag barges are barges certificated to carry, in bulk, any hazardous material as defined in 46 CFR 150.115. Currently, 46 CFR 150.115 defines hazardous material as:

- (a) A flammable liquid as defined in 46 CFR 30.10-22 or a combustible liquid as defined in 46 CFR 30.10-15;
- (b) A material listed in Table 151.05, Table 1 of part 153, or Table 4 of part 154 of Title 46, CFR; or
- (c) A liquid, liquefied gas, or compressed gas listed in 49 CFR 172.101.

This rule proposes additional restrictions and operating requirements on all vessels within a smaller portion of the regulated navigation area, specifically, the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge). Within this smaller area, this rule proposes the prohibition of vessel loitering, mooring or laying up on the right or left descending banks, or making or breaking tows on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline

located approximately 0.52 miles north east of Romeo Road Bridge). In addition, vessels may only enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge) 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 canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge). The rule also proposes that all persons on open decks of a vessel engaged in commercial service must wear a Coast Guard approved Type I personal flotation device while on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge). All persons on recreational vessels that are propelled or controlled by machinery, sails, oars, paddles, poles or another vessel must wear the Coast Guard approved personal flotation device (PFD) that is required to be onboard by 33 CFR Part 175, while on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge).

These restrictions are necessary for safe navigation of the regulated navigation area 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 Army Corps. Deviation from this rule would be prohibited unless specifically authorized by the Commander, Ninth Coast Guard District, or his designated representatives. The Commander, Ninth Coast Guard District, will designate Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago, as his designated representatives for the purposes of the proposed regulated navigation area.

A safety zone would be enforced during tests or other periods of time that Barrier IIA is operated at voltages higher than one volt per inch. This proposed safety zone, which would encompass all the waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile

marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge), would be enforced by the Captain of the Port Lake Michigan, for such times before, during, and after barrier testing as he or she deems necessary to protect mariners and vessels from damage or injury. The Captain of the Port Lake Michigan would cause notice of enforcement or suspension of enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification will include, but will not be limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan would issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is suspended. In addition, Captain of the Port Lake Michigan maintains a telephone line that is manned 24 hours a day, seven days a week. The public may obtain information concerning enforcement of the safety zone by contacting the Captain of the Port Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

Regulatory Planning and Review

This proposed 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. Nevertheless, we have prepared a preliminary Regulatory Analysis of potential costs and benefits which is available in the docket where indicated under the **ADDRESSES** section of this preamble. A summary of the analysis follows:

This proposed rule would mitigate safety risks associated with the electrical fish barrier system in the Chicago Sanitary and Ship Canal near Romeoville, Illinois. The Army Corps operates and maintains the fish barrier. Navigational and operational restrictions are necessary for all vessels transiting through the navigable waters located adjacent to and over the barriers in order to mitigate safety risks.

The proposed rule would establish a permanent regulated navigation area for navigable waters adjacent to and over the electrical fish barrier. The rulemaking would also require certain provisions while transiting the regulated navigation area, including bow boat assistance for tows with red flag barges. Other proposed requirements of this

rulemaking clarify navigation requirements that are normal industry practice (e.g., commercial tows using wire ropes) or have been in existence since 2002 as a result of the Army Corps' development, operation, and maintenance of the electrical fish barrier. See the "Background and Purpose" and "Discussion of Proposed rule" sections for additional details on the requirements.

This proposed rule would affect traffic transiting over the electrical fish barrier and surrounding waters. The Army Corps maintains data about the commercial vessels using the Lockport Lock and Dam, which provides access to the proposed regulated navigation area. During 2007, the commercial traffic through the Lockport Lock consisted of 147 towing vessels and 13,411 barges. Of those, 100 towing vessels and 2,246 barges were handling red flag cargo. There were 983 lockages involving red flag barges in 2007.

The potential cost associated with this proposed rule would be for bow boat assistance. The Army Corps currently covers this cost through contract funding. In the event that such funding would cease, operators needing to transit the regulated navigation area with one or more red flag barges would incur a cost of approximately \$850 per one-way transit (i.e., based on current Army Corps funding estimates).

If bow boat assistance funding were to cease, we estimate the undiscounted annual recurring cost to industry to be \$835,550 (i.e., 983 potential red flag transits × \$850 for bow boat assistance fee). Based on this potential annual cost, we estimate the total present value 10-year (2010–2019) cost to industry of this proposed rule to be approximately \$5.9 million at a seven percent discount rate and \$7.1 million at a three percent discount rate.

We expect this proposed rule would mitigate the marine safety risks as a result of the permanent operation and maintenance of the electrical fish barriers. This rulemaking would also allow commerce to continue through the waters adjacent to or over these barriers.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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.

An Initial Regulatory Flexibility Analysis (IRFA) discussing the impact of this proposed rule on small entities is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

From our analysis, we found the proposed rule would affect an estimated 23 entities, of which 10 are considered small entities according to SBA size standards. If operators incur the direct cost of bow boat assistance, we estimate five (or fifty percent) of the affected small entities would incur a cost impact of less than or equal to one percent of revenue and eight (or eighty percent) of the affected small entities would incur a cost impact of less than or equal to three percent of revenue.

At this time, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the docket as detailed under **ADDRESSES**. In your comment explain why, how, and to what degree you think this proposed rule would have an economic impact on you.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Ann Henkelman, Waterways Management Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199; 216–902–6288. 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 proposed rule would call 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 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 proposed 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 would not result in such 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 concern 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 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 procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2, Figure 2–1, paragraph 34(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the

establishing, disestablishing, or changing regulated navigation areas and security or safety zones. A preliminary "Environmental Analysis Check List" supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

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 proposes to amend 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 3306, 3703 and Chapter 701; 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.

§ 165.923 [Removed]

2. Remove § 165.923.
3. Add § 165.924 to read as follows:

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

(a) *Regulated Navigation Area.* The following is a Regulated Navigation Area: 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).

(1) *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 regulated navigation area. 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 representatives means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

Hazardous material means any material as defined in 46 CFR 150.115.

On-scene representative means any Coast Guard commissioned, warrant or petty officer who has been designated

by the Captain of the Port Lake Michigan to act on his behalf.

Red flag barge means any barge certificated to carry any hazardous material in bulk.

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

(ii) All up-bound and down-bound barge tows that contain one or more red flag barges transiting through the regulated navigation area must be assisted by a bow boat until the entire tow is clear of the regulated navigation area.

(iii) Vessels engaged in commercial service, as defined in 46 U.S.C 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions. Vessels engaged in commercial service must work out passing arrangements prior to entering the regulated navigation area and may only pass (meet or overtake) another vessel outside of the regulated navigation area.

(iv) Commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(v) All vessels are prohibited from loitering between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge).

(vi) Vessels may enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge) 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 canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge).

(vii) All persons on open decks of a vessel engaged in commercial service must wear a Coast Guard approved Type I personal flotation device (PFD) while in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge). All persons on recreational vessels that are propelled or controlled by machinery, sails, oars, paddles, poles or

another vessel must wear the Coast Guard approved PFD that is required to be onboard by 33 CFR Part 175, while on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge).

(viii) Vessels may not moor or lay up on the right or left descending banks of the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge).

(ix) Towboats may not make or break tows if any portion of the towboat or tow is located in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge).

(3) *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.

(4) *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.

(b) *Safety Zone.* (1) The following area is a safety zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.52 miles north east of Romeo Road Bridge).

(2) *Notice of enforcement or suspension of enforcement.* The Captain of the Port Lake Michigan will enforce the safety zone established by this section only upon notice. Captain of the Port Lake Michigan will cause notice of the enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of these safety zones is suspended.

(3) *Regulations.* (i) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his on-scene representative.

(ii) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his on-scene representative.

(iii) The on-scene representative of the Captain of the Port Lake Michigan may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Lake Michigan or his on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: May 12, 2009.

D.R. Callahan,

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

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DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Negotiated Rulemaking Committees; Establishment

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Establishment of negotiated rulemaking committees; and notice of public hearings.

SUMMARY: We announce our intention to establish one or more negotiated rulemaking committees to prepare proposed regulations under Title IV of the Higher Education Act of 1965, as amended (HEA). The committees will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We also announce three public hearings, at which interested parties may suggest additional issues that should be considered for action by the negotiating committees. In addition, for anyone unable to attend a public hearing, we announce that the Department will accept written comments.

The Department will also be conducting forums after each of the three hearings to discuss (1) how changes in the Department's financial aid communications and processes (including the Free Application for Federal Student Aid (FAFSA)) could improve college planning, preparation and access, and (2) how best to leverage Federal postsecondary programs to foster student educational persistence and degree attainment.

DATES: The dates, times, and locations of the public hearings are listed under the **SUPPLEMENTARY INFORMATION** section of this notice. We must receive written comments suggesting issues that should be considered for action by the negotiating committees on or before June 23, 2009.

ADDRESSES: Please send written comments to Wendy Macias, U.S. Department of Education, 1990 K Street, NW., Room 8017, Washington, DC 20006, or by fax to Wendy Macias at (202) 502-7874. You may also e-mail your comments to negreg09@ed.gov.

FOR FURTHER INFORMATION CONTACT: For information about the public hearings and forums, go to <http://www.ed.gov/policy/highered/reg/hearulemaking/2009/negreg-summerfall.html> or contact: Mary Miller, U.S. Department of Education, 1990 K Street, NW., Room 8066, Washington, DC 20006.

Telephone: (202) 502-7824. You may also e-mail your questions about the public hearings to: Mary.Miller@ed.gov.

For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at <http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>. For further information about negotiated rulemaking contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., Room 8017, Washington, DC 20006. Telephone (202) 502-7526. You may also e-mail your questions about negotiated rulemaking to: Wendy.Macias@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person responsible for information about the public hearings.

SUPPLEMENTARY INFORMATION: Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under Title IV of the HEA, the Secretary obtain

public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary uses a negotiated rulemaking process to develop the proposed regulations.

We announce our intent to develop proposed regulations by following the negotiated rulemaking procedures in section 492 of the HEA. We intend to select participants for the negotiated rulemaking committees from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select, from the nominees, individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA.

Regulatory Issues

We intend to convene one committee to develop proposed regulations governing foreign schools, including the implementation of the changes made to the HEA by the Higher Education Opportunity Act (HEOA), Public Law 110-315, that affect foreign schools.

We intend to convene at least one other committee to develop proposed regulations to maintain or improve program integrity in the Title IV, HEA programs, relating to topics such as the following:

- Satisfactory academic progress.
- Incentive compensation paid by institutions to persons or entities engaged in student recruiting or admission activities.
- Gainful employment in a recognized occupation.
- State authorization as a component of institutional eligibility.
- Definition of a credit hour, for purposes of determining program eligibility status, particularly in the context of awarding Pell Grants.
- Verification of information included on student aid applications.
- Definition of a high school diploma as a condition of receiving Federal student aid.

After a complete review of the public comments presented at the public hearings and from the written submissions, we will publish a subsequent notice (or notices) announcing the specific subject areas for which we intend to establish negotiated rulemaking committees, and a request for nominations for individual negotiators for those committees who represent the interests significantly affected by the proposed regulations.

Public Hearings

We will hold three public hearings for interested parties to discuss the agenda