

Section	Remove	Add
181.33(b) .....	2100 Second Street, SW., Washington, DC 20593-0001.	2100 2nd St., SW., Stop 7581, Washington, DC 20593-7581.

## PART 183—BOATS AND ASSOCIATED EQUIPMENT

■ 133. The authority citation for part 183 continues to read as follows:

**Authority:** 46 U.S.C. 4302; Pub. L 103-206, 107 Stat. 2439; 49 CFR 1.46.

### § 183.5 [Amended]

■ 134. In § 183.5(a), remove the phrase “Washington, DC 20593-0001” and add, in its place, the phrase “2100 2nd St., SW., Stop 7581, Washington, DC 20593-7581”.

### § 183.607 [Amended]

■ 135. In § 183.607(a) introductory text, remove the phrase “2100 Second Street, SW., Washington, DC 20593-0001” and add, in its place, the phrase “2100 2nd St., SW., Stop 7000, Washington, DC 20593-7000”.

Dated: June 9, 2010.

**Steve Venckus,**

*Chief, Office of Regulations and Administrative Law, United States Coast Guard.*

[FR Doc. 2010-14620 Filed 6-24-10; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-1080]

RIN 1625-AA00, 1625-AA11

#### Amended 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 revising its safety zone and Regulated Navigation Area (RNA) on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This revised temporary interim rule reduces the areas covered by the safety zone and RNA, and places additional restrictions on vessels that may transit the RNA.

**DATES:** *Effective Date:* Temporary section, § 165.T09-1080, is effective June 25, 2010 until 5 p.m. on December 1, 2010. This revision is enforceable with actual notice beginning upon date of signature.

*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:

(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 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 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 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).

For additional discussion of the good cause 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, 755).

#### 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 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 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 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 amends 33 CFR 165.T09-1080, 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

33 CFR 165.T09–1080(a)(1), which established the area of the safety zone, to read “450 feet south of the Romeo Road Bridge”, instead of “958 feet south of the Romeo Road Bridge”. This rule amends § 165.T09–1080 (b)(1), which established the size of the RNA, to reduce the size of the RNA from mile markers 295.0–297.5 to mile markers 295.5–297.2. This rule amends § 165.T09–1080 (b)(2)(ii), which listed restrictions on vessels that may transit the RNA, by adding two more restrictions on vessels that may transit the RNA. Vessels must be greater than 20 feet to transit the RNA. Additionally, personal watercraft, motorized and non-motorized, of any kind (*e.g.* jet skis, wave runners, kayaks etc.) will not be permitted to transit the RNA.

All other provisions of the safety zone and RNA remain unchanged.

### 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 temporary interim 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, and that the revisions being made by this rule are minimal. What follows is the regulatory impact statement that published on January 6, 2010, when this temporary interim rule was first established:

This rule will affect commercial traffic transiting the electrical dispersal fish barrier system and surrounding waters. The USACE maintains data about the commercial vessels using the Lockport Lock and Dam, which provides access to the proposed RNA. According to USACE 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

USACE data, recreational vessels made up 66 percent of the usage of the Lockport Lock and Dam in 2007. Operation and maintenance of the USACE 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 USACE. 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 USACE. 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.

### 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

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.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 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:

**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.

■ 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) \* \* \*

(ii) \* \* \*

(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.).

\* \* \* \* \*

Dated: June 15, 2010.

### 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**