

Dated: September 18, 2003.

H.E. Johnson, Jr.,

*Rear Admiral, U.S. Coast Guard, Commander,
Seventh Coast Guard District.*

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-03-241]

RIN 1625-AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System Within the Ninth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) for all portions of the Illinois Waterway System located within the Ninth Coast Guard District. This RNA applies to towing vessel operators and fleeting area managers who are responsible for the movement of barges carrying certain dangerous cargoes on the Illinois Waterway System and requires them to report their position and other information to the Inland River Vessel Movement Center (IRVMC). This action is necessary to ensure public safety, prevent sabotage or terrorist acts, and facilitate the efforts of emergency services and law enforcement officers responding to terrorist attacks.

DATES: This rule is effective on November 1, 2003. Comments and related material must reach the Coast Guard on or before January 5, 2004.

ADDRESSES: You may mail comments and related material to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio, 44199-2060. Commander, Ninth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09-03-241] and are available for inspection or copying at Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio, 44199-2060 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. You must also mail comments on collection of information to the Office of

Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT:

Commander Michael Gardiner or Lieutenant Matthew Colmer, Ninth Coast Guard District Marine Safety Division, at (216) 902-6045.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 2, 2003, the Coast Guard published a temporary final rule and request for comments entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System within the Ninth Coast Guard District" in the **Federal Register** (68 FR 23399). We did not receive any comments. However, the Eight Coast Guard District published a parallel temporary final rule on May 2, 2003 (68 FR 23393). As of July 9, 2003, the Eight Coast Guard District had received six written comments in response to their temporary final rule.

On July 30, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System located within the Ninth Coast Guard District" in the **Federal Register** (68 FR 44706). When drafting the NPRM, we considered all written comments submitted to the docket for the parallel temporary final rule issued by the Eight Coast Guard District that was published on May 2, 2003 (68 FR 23399). The Coast Guard's responses to those comments are explained under the "Discussion of Comments and Changes" section of the NPRM (68 FR 44706).

As of September 15, 2003, we have only received one written comment on the NPRM. No public meeting was requested so one was not held.

As indicated in our "Discussion of Comments and Changes" section below, we have considered this comment in this interim final rule and, where appropriate, we have made the rule less burdensome than the temporary final rule currently in effect. In issuing this interim final rule, we have allowed for an additional comment period before we impose any final rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. On May 2, 2003, we published a temporary final rule (TFR) entitled "Regulated Navigation Area; Reporting

Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System with the Ninth Coast Guard District" in the **Federal Register** (68 FR 23399) that is set to expire 11:59 p.m. EDT on October 31, 2003.

The continued threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding, found at Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered as evidenced by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the current threat of attack, MARAD 02-07 (October 10, 2002). Consequently, heightened measures have been instituted to ensure the safety of vessels, ports and waterway users. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals, vessels or facilities on the Illinois Waterway System within the Ninth Coast Guard District. Any delay in the effective date of this TFR is impractical and contrary to the public interest. The original temporary final rule was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties on the navigable waters of the U.S.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09-03-241], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during

the comment period before issuing any final rule.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Ninth Coast Guard District (m) 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

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' abilities to utilize multiple means in different geographic areas thereby increasing their opportunities to maximize destruction.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002). The President found that the security of the U.S. is endangered by the September 11, 2001 attacks and terrorist attacks continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, (68 FR 53665, September 10, 2003); *Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism*, (68 FR 55189, September 18, 2003). The references to these Presidential Documents as they appear in this interim final rule have updated those referenced in the NPRM (68 FR 44697). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD also issued Advisory 03-03 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the transportation community in the United States. The ongoing hostilities in Afghanistan and

Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert due to the Al Qaeda organization and other similar organizations who have declared their intentions to conduct armed attacks on U.S. interests worldwide.

Therefore, on April 16, 2003, the Coast Guard established a temporary RNA within that portion of the Illinois Waterway System located within the Ninth Coast Guard District in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts. The temporary RNA remains in effect and applies to barges loaded with certain dangerous cargoes (CDCs) operating on the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. The RNA affects vessels transporting barges loaded with CDCs that if used as weapons of terrorism could result in substantial loss of life, property, environmental damage, and grave economic consequences. The temporary final rule requires operators of barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the IRVMC for protection against sabotage and terrorist acts. The temporary final rule published May 2, 2003, (68 FR 23399) expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on Illinois Waterway System and therefore we are issuing an interim rule while we continue to consider alternatives to increase maritime domain awareness on the Illinois Waterway System within the Ninth Coast Guard District. This rule allows the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

Discussion of Comments and Changes

As of September 15, 2003, we received one written comment to the NPRM. The comment was addressed to both the Eighth and Ninth Coast Guard Districts. Two parts of the comment were focused specifically on the Ninth Coast Guard District. We will address those two areas of concern first.

The first concern was that rather than have specific reporting points, that operators be permitted to report while within a particular segment like what is already permitted in the Eighth Coast Guard District. The Ninth Coast Guard

District is adopting this recommendation so that the reporting system process is identical whether you are in the Eighth or Ninth Coast Guard District. The second concern requested that we remove two reporting points: the Lockport Lock & Dam and the Dresden Lock & Dam. Since vessels are reporting in upon entry into the RNA, and upon dropping off or picking up a CDC barge from a fleeting area or facility, the Coast Guard will follow this recommendation.

Several other comments were received that were more general in nature. Since the Eighth Coast Guard District has a parallel rule, we are adopting their responses to those comments to ensure uniformity between the Eighth and Ninth District and the requirements of the IRVMC. The comment focused generally on 4 concerns: (a) Reporting the planned route, (b) notifying the IRVMC 4 hours prior to originating a voyage within the RNA with one or more CDC barges, (c) notifying the IRVMC upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, and (d) reporting information as directed by the Coast Guard. Each section of this comment is discussed in more detail in the following six paragraphs.

Planned Route. The one comment we received stated that the requirement for submission of a planned route will increase the burden upon the mariner while providing no improvement on the information already required since point-to-point movements rarely allow for more than one route. We agree and have removed the requirement to report the planned route because the IRVMC will be receiving periodic updates on a CDC barge(s)'s location as the towing vessel operator checks in at designated reporting points along the planned route. The requirement to submit a report with the name and location of the destination for each CDC barge and the estimated time of arrival remains unchanged.

Four hour advance notification. The one comment we received stated a concern regarding the requirement to report information 4 hours before originating a voyage within the RNA with one or more CDC barges. The comment indicates that fleeting area managers do not always have 4 hours advance notice of movement between receipt of an order and origination of the voyage. The comment suggested the requirement be amended to allow fleeting area managers to notify the IRVMC as soon as possible after the fleeting area manager receives a request to make up a tow or to deliver a CDC

barge at a terminal. While we agree that in certain cases a fleeting area manager will not have sufficient time to make a 4-hour advance notification of movement to the IRVMC, this regulation does not require fleeting area managers to provide such notification. This regulation requires towing vessel operators to notify the IRVMC 4 hours before originating a voyage within the RNA with one or more CDC barges. However, we believe the conceptual basis of the comment applies to this requirement. For example, an operator of a towing vessel without any CDC barges operating in the RNA may receive an order to pick up a CDC barge. If the towing vessel is in close proximity to where the CDC barge is located, the evolution of making up the new tow with the CDC barge and originating the voyage may take less than 4 hours. According to the existing requirement in the NPRM, the towing vessel operator would then qualify as originating a voyage within the RNA with one or more CDC barges and as such would be required to provide the IRVMC with a notice 4 hours before originating the voyage. The Coast Guard understands that delaying the voyage to comply with the 4-hour advance notification requirement could negatively affect commercial operations. To alleviate this potential problem, we are adding an exception to the existing requirement. This exception will permit the towing vessel operator to make the required report to the IRVMC as soon as possible before originating a voyage in the RNA with one or more CDC barges. This exception is valid only if the following conditions exist—

- (a) The evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage; and
- (b) The towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges.

If the previous two conditions exist, the towing vessel operator must submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges.

Movement of barges from fleeting area to fleeting area or facility. The one comment we received stated that companies routinely move barges from one fleeting area to another fleeting area or facility and that reporting each of these movements would impose an excessive burden. It further states that one company may operate multiple fleeting areas within a limited geographic area. The comment recommends that the Coast Guard

define fleeting areas within a certain geographic area as a “single fleet” and allow movement within that “single fleet” to occur without reporting each movement to the IRVMC. The purpose of knowing the specific location of a CDC barge is to allow for a more efficient response to an incident or threatened incident. It is the intention of this regulation to give the Coast Guard the necessary information to be able to track and have knowledge of the location of each CDC barge at all times. Under the existing requirements, we are only asking the fleeting area manager to provide limited information regarding the movement of a CDC barge from one fleeting area to another fleeting area or facility. We are not changing this requirement, however, we do feel that definitions are needed for “fleeting area”, “fleet tow boat”, and “towing vessel”. For the purposes of this requirement, the term “fleeting area” will be defined to mean any fleet, including any facility, located within the area covered by one single port. The term “fleet tow boat” will be defined to mean any size vessel that is used to move, transport, or deliver a CDC barge within a fleeting area. The term “towing vessel” will be defined to mean any size vessel that is used to move, transport, or deliver a CDC barge to a fleet or facility that is located in a different port than where the voyage originated.

The following example is provided to illustrate the intention of these definitions: A fleeting area manager is required to provide notification to the IRVMC of the movement of a CDC barge from fleet “A” located in port “A”, to fleet “B” located in port “A” when such movement is conducted by a fleet tow boat. If the movement of a CDC barge were to occur from fleet “A” located in port “A”, to fleet “Z” located in port “Z”, such movement is considered to have been done by a towing vessel and the notifications requirements would reside with the towing vessel operator when the CDC barge was picked up at fleet “A” and dropped off at fleet “Z”.

When directed by the IRVMC. The one comment we received indicated that there was a lack of coordination within the Coast Guard that led to mariners having to submit duplicate reports of required information. There is a concern that a towing vessel operator may receive multiple calls from various government agencies requesting similar information. These multiple calls could create an unnecessary distraction for the towing vessel operator. The comment requested the Coast Guard clarify the information reporting requirement to read “As directed by the IRVMC.” The published NPRM currently reads “When

directed by the IRVMC” and as such will not be changed. However, we feel it is necessary to explain the different types of calls a towing vessel operator can expect while transporting one or more CDC barges in the RNA. The first type of call would be from the IRVMC for the following reasons: (1) Obtaining missing or illegible information, (2) investigating missed or inaccurate reports, (3) collecting information for the purposes of responding to an incident or threatened incident, (4) responding to an increase in the maritime security level, or (5) advising the mariner on new or unexpected changes in procedures. This list of reasons is not all-inclusive. The second type of call would be from the United States Army Corps of Engineers (USACE) requesting information from the mariner as the towing vessel approaches a USACE controlled lock and dam. As many of the reporting points required by this regulation are located at USACE controlled locks and dams, the Coast Guard understands that some information provided by the towing vessel operator will have to be supplied twice—once to the USACE and once to the IRVMC. The Coast Guard and USACE are currently working to address the issue of duplicative reporting and are researching methods to use existing technology to serve as a single point of collection. The third type of call would be from a Coast Guard Captain of the Port office for issues pertaining to the coordination of vessel escorts or boardings or other marine safety issues. Calls for these purposes are unrelated to the information collection requirements outlined by this regulation and are necessary for the Coast Guard Captain of the Port to meet Coast Guard mission requirements. The final type of call would be from a Coast Guard vessel or boarding team located in close proximity to the towing vessel for the purposes of conducting law enforcement operations or vessel escorts. These types of calls are also unrelated to the information collection requirements outlined by this regulation and are necessary to meet Coast Guard mission requirements.

Response to Comments Summary

In response to the received comment the Coast Guard is (1) removing the requirement to report the planned route of one or more CDC barges, (2) establishing an exception to the 4-hour advance notification for originating a voyage in the RNA with one or more CDC barges, (3) defining the terms “fleeting area”, fleet tow boat”, and “towing vessel” to clarify fleeting area manager reporting requirements, and (4)

explaining the different types of calls a towing vessel operator can expect while transporting one or more CDC barges in the RNA.

Portions of this regulation have been revised to reflect the usage of these new definitions. The addition of the new definitions does not create any substantial changes. The portions of the regulatory text that are affected by these new definitions include the "Applicability", "Definitions", and "Regulations" sections.

Company Representative or Dispatcher Making Required Reports. The NPRM indicated that a company representative or dispatcher would be allowed to report the required information to the IRVMC on behalf of the towing vessel operator or fleeting area manager. With the addition of the definitions for "fleet tow boat" and "towing vessel", we realized that allowing a company representative or dispatcher to make reports on behalf of a towing vessel operator is contrary to the intentions of this regulation. The intention of this regulation is to provide the Coast Guard with positive reports generated by towing vessel operators and fleeting area managers who have direct control over CDC barges. Because fleets and facilities typically have multiple persons who have direct control over CDC barges, we are allowing a fleeting area manager, company representative, or dispatcher to make the required reports. In contrast, a towing vessel operator is the only person who will have direct control over CDC barges in their tow. As it relates to this regulations, we have clarified the definition of "towing vessel operator" to mean the Captain or pilot who is on watch on board a towing vessel. The portions of the regulatory text that are affected by this clarification include the "Definitions" and "Regulations" sections.

Discussion of Rule

The Coast Guard is establishing a regulated navigation area for the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. This rule applies to: (1) towing vessel operators responsible for one or more CDC barges within the regulated area, and (2) fleeting area managers responsible for CDC barges in a fleeting area. The terms "barge", "certain dangerous cargo or (CDC)", "CDC barge", "downbound", "fleet tow boat", "fleeting area", "Ninth Coast Guard

District", "towing vessel", "towing vessel operator", and "upbound" are defined in the regulatory section of this rule.

Towing vessel operators responsible for one or more CDC barges are required to report specific information to the IRVMC under the following conditions: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges, except if (a) the evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage, and (b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges, in which case the towing vessel operator must submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) at designated reporting points in paragraph (e) of this section; (6) when the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (7) any significant deviation from previously reported information; (8) upon departing the RNA with one or more CDC barges; and (9) when directed by the IRVMC.

Fleeting area managers are required to report specific information to the IRVMC under the following conditions: (1) Once daily, report all CDC barges within the fleeting area; (2) upon moving a CDC barge within a fleeting area by a fleet tow boat; (3) any significant deviation from previously reported information; and (4) when directed by the IRVMC.

A company representative or dispatcher may report the required information to the IRVMC on behalf of the fleeting area manager.

Each report made to the IRVMC by a towing vessel operator or fleeting area manager must contain all the information items specified in tables 165.921(f) and 165.921(g), respectively.

Reports must be made to the IRVMC by telephone to (866) 442-6089, by fax to (866) 442-6107, or by e-mail to irvmc@cgstl.uscg.mil. A reporting form and e-mail link is available at <http://www.uscg.mil/d8/Divs/M/IRVMC.htm>.

The Coast Guard will consider and approve alternative reporting methods to meet any reporting requirements if:

(1) the request for the alternative is submitted in writing to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio, 44199-2060; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

The Coast Guard encourages the submission of requests for alternative reporting methods. It is the Coast Guard's hope that companies will embrace current modern technology or future technology as it becomes available to automatically report the locations of the towing vessels and the CDC barges they are responsible for directly to the Coast Guard in real or as close to real time as possible. We believe that the development of such systems will significantly reduce the burden imposed upon the towing vessel operator and fleeting area manager who must submit the reports, as well as those Coast Guard personnel who must process those reports.

Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or the IRVMC.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We present this Regulatory Evaluation for the purposes of information.

Evaluation. The regulatory baseline for this rule is the existing temporary rule. The cost for complying with the rule will differ depending on the means used to make a report to the IRVMC and the type of report, either an initial report or an update. The cost of the rule presented below is based on the average number of reports received by the IRVMC in April 2003 and May 2003.

ESTIMATED ANNUAL COST AND BENEFIT OF THE RULE
[2003 Dollars]

Item	Cost per initial call	Cost per update call	Total
Personnel	\$9,462	\$17,871	\$27,333
Operating Expenses	28,386	53,613	81,999
Total	\$37,848	\$71,484	\$109,332

This cost estimate assumes: (1) The average merchant mariner's hourly rate is \$30, (2) the average initial call is 6 minutes, (3) the average update call is 2 minutes, (4) the average cost per cell phone call is \$1.50 per minute, and (5) 15 percent of all responses are initial reports to the IRVMC. Therefore, based on 177 respondents, the average cost is \$618 per CDC barge per year. The reporting requirements are necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge transits. The minimal hardships that may be experienced by persons or vessels, as a result of this rule, are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: towing vessel operators and fleeting area managers responsible for CDCs barges on inland waterways within the Ninth Coast Guard District. This RNA will not have a significant economic impact on a substantial number of small entities because this rule does not require any alteration of barge operations or transits. The operational communications required by this RNA do not require towing vessel operators or fleeting area managers to obtain new equipment and can be made toll free to the IRVMC.

If you are a small business entity and are significantly affected by the regulation, please contact CDR Michael Gardiner or LT Matthew Colmer, Project Managers for the Ninth Coast Guard District Commander, 1240 E. Ninth Street, Cleveland, Ohio 44199-2060, telephone (216) 902-6045.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding this 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).

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule revises an existing OMB-approved collection of information (1625-0105). The new collection of information estimate is based on data gathered as a result of the information collected under the temporary rule and is based on actual reports received by

the IRVMC, as well as actual observation and tracking, for April 2003 and May 2003.

Title: Regulated Navigation Areas; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

OMB Control Number: 1625-0105.

Summary of the Collection of Information: The Coast Guard requires position and intended movement reporting, and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts. This rule amends 33 CFR part 165 to require:

Towing vessel operators and fleeting area managers responsible for CDC barges must report the following information via toll free telephone, toll free fax, or email:

- a. Name of barge and towing vessel;
- b. Name of fleeting area and facility;
- c. Estimated time of arrival (ETA) at fleeting area and facility;
- d. Estimated time of departure (ETD) from fleeting area and facility;
- e. Upon entry into the covered geographical area;
- f. Four hours prior to originating a voyage with a CDC within the RNA, except if (a) the evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage, and (b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges, in which case towing vessel operator shall submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges;
- g. Upon picking up an additional CDC barge from a fleeting area or facility;
- h. Upon dropping off a CDC barge at a fleeting area or facility;
- i. Upon moving a CDC barge within a fleeting area by a fleet tow boat;
- j. Once daily, all CDC barges within a fleeting area;
- k. ETA at approximately 90 designated reporting points within the covered geographical area;
- l. At any time the ETA to a reporting point varies by 6 hours from the previously reported ETA;
- m. Any significant deviation from previously reported information;
- n. Upon departing the covered geographical area; and

o. When directed by the IRVMC.

A company representative or dispatcher may report to the IRVMC on behalf of the fleeting area manager.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard is issuing regulations requiring position and intended movement reporting and fleeting operations reporting from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts.

Use of Information: The information is required to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations. The Coast Guard will use the information to maintain continuous maritime domain awareness on the inland rivers so that we may respond as appropriate to an actual or threatened terrorist action and enhance maritime security by boarding and/or escorting CDC barges in the vicinity of high-density population areas.

Description of the Respondents: The respondents are owners, agents, masters, towing vessel operators, or persons in charge of barges loaded with CDCs or having CDC residue operating on the inland rivers located within the Eighth and Ninth Coast Guard Districts.

Number of Respondents: The existing OMB-approved collection number of respondents is 3,505. This rule will decrease the number of respondents by 3,328 to a total of 177.

Frequency of Response: Towing vessel operators moving barges carrying CDCs or CDC residue will submit reports as necessary. The existing OMB-approved collection annual number of responses is 7,711. This rule will increase the number of responses by 13,313 to a total of 21,024.

Burden of Response: The existing OMB-approved collection burden of response is 15 minutes (0.25 hours)(burden of response is the time required to complete the paperwork requirements of the rule for a single response). This rule will decrease the burden of response by 9 minutes (0.15 hours) to a total of 6 minutes (0.10 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 1,928 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This rule will decrease the total annual burden by 1017 hours to a total of 911 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C.

3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review and approval of the revised collection of information. The existing OMB-approved collection (1625-1505) expires on October 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is, whether it can help us perform our functions better, whether it is readily available elsewhere, how accurate our estimate of the burden of collection is, how valid our methods for determining burden are, how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If and when OMB approves this revised collection of information, we will publish a separate notice in the **Federal Register**.

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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would 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 would not create an environmental risk to health or risk to safety that might 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 would 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.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final "Environmental Analysis Check List" and a final "Categorical

Exclusion Determination” are available where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 166 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.921 to read as follows:

§ 165.921 Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Illinois Waterway System located within the Ninth Coast Guard District.

(a) *Regulated Navigation Area*. The following waters are a regulated navigation area (RNA): the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7 and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River.

(b) *Applicability*. This section applies to towing vessel operators and fleeting area managers responsible for CDC barges in the RNA. This section does not apply to towing vessel operators responsible for barges not carrying CDC barges, or fleet tow boats moving one or more CDC barges within a fleeting area.

(c) *Definitions*. As used in this section—

Barge means a non-self propelled vessel engaged in commerce, as set out in 33 CFR 160.204.

Certain Dangerous Cargo or (CDC) includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 “poisonous gas”, as listed in 49 CFR 172.101 that is also a “material poisonous by inhalation” as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per barge.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is

required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 “poisonous material” as listed in 49 CFR 172.101 that is also a “material poisonous by inhalation”, as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per barge when not in a bulk packaging.

(6) Class 7, “highway route controlled quantity” radioactive material or “fissile material, controlled shipment”, as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids—

- (i) Acetone cyanohydrin,
- (ii) Allyl alcohol,
- (iii) Chlorosulfonic acid,
- (iv) Crotonaldehyde,
- (v) Ethylene chlorohydrin,
- (vi) Ethylene dibromide,
- (vii) Methacrylonitrile,
- (viii) Oleum (fuming sulfuric acid),

and

- (ix) Propylene Oxide.

CDC barge means a barge containing CDCs or CDC residue.

Downbound means the tow is traveling with the current.

Fleet tow boat means any size vessel that is used to move, transport, or deliver a CDC barge within a fleeting area.

Fleeting area means any fleet, including any facility, located within the area covered by one single port.

Inland River Vessel Movement Center or (IRVMC) means the Coast Guard office that is responsible for collecting the information required by this section.

Ninth Coast Guard District means the Coast Guard District as set out in 33 CFR 3.45–1.

Towing vessel means any size vessel that is used to move, transport, or deliver a CDC barge to a fleet or facility that is located in a different port than where the voyage originated.

Towing vessel operator means the Captain or pilot who is on watch on board a towing vessel.

Upbound means the tow is traveling against the current.

(d) *Regulations*. The following must report to the Inland River Vessel Movement Center (IRVMC):

(1) The towing vessel operator responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.921(f), in paragraph (f) of this section, to the IRVMC:

(i) Upon point of entry into the RNA with one or more CDC barges;

(ii) Four hours before originating a voyage within the RNA with one or more CDC barges, except if the evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage, and the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges, in which case the towing vessel operator shall submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges;

(iii) Upon dropping off one or more CDC barges at a fleeting area or facility;

(iv) Upon picking up one or more additional CDC barges from a fleeting area or facility;

(v) At designated reporting points, set forth in paragraph of this section;

(vi) When the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA;

(vii) Any significant deviation from previously reported information;

(viii) Upon departing the RNA with one or more CDC barges; and

(ix) When directed by the IRVMC.

(2) The fleeting area manager responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.921(g), in paragraph (g) of this section, to the IRVMC:

(i) Once daily, report all CDC barges within the fleeting area;

(ii) Upon moving one or more CDC barges within a fleeting area by a fleet tow boat;

(iii) Any significant deviation from previously reported information; and

(iv) When directed by the IRVMC.

(3) Reports required by this section may be made by a company representative or dispatcher on behalf of the fleeting area manager.

(4) Reports required by this section must be made to the IRVMC either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to irvmc@cgstl.uscg.mil. A reporting form and e-mail link are available at <http://www.uscg.mil/d8/Divs/M/IRVMC.htm>.

(5) The general regulations contained in 33 CFR 165.13 apply to this section.

(e) *Ninth Coast Guard District Illinois Waterway System RNA Reporting points*. Towing vessel operators responsible for one or more CDC barges in the RNA must make reports to the Inland River Vessel Movement Center at each point listed in this paragraph (e).

(1) Illinois River (ILR) Upbound, at Mile Markers (M) and when Departing Lock & Dam (L&D)—

(i) M 187.2 (Southern Boundary MSO Chicago AOR),

(ii) M 303.5 Junction of Chicago Sanitary Ship Canal and Calumet-Sag Channel,
 (iii) M 326.4 Thomas S. O'Brien L&D, Calumet River,
 (iv) M 333.5 Confluence of Calumet River and Lake Michigan, and
 (v) M 326.7 Chicago L&D, Chicago River.
 (2) Illinois River (ILR) Downbound Reporting Points, at Mile Markers (M)

and when Departing Lock & Dam (L&D)—
 (i) M 326.7 Chicago L&D, Chicago River,
 (ii) M 333.5 Confluence of Calumet River and Lake Michigan,
 (iii) M 326.4 Thomas S. O'Brien L&D, Calumet River,
 (iv) M 303.5 Junction of Chicago Sanitary Ship Canal and Calumet-Sag Channel, and

(v) M 187.2 (Southern Boundary MSO Chicago AOR).
 (f) Information to be reported to the IRVMC by towing vessel operators. With the exception noted in paragraph (d)(1)(ii) of this section, towing vessel operators responsible for one or more CDC barges in the RNA must report all the information required by this section as set out in table 165.921(f) of this paragraph.

TABLE 165.921(F).—INFORMATION TO BE REPORTED TO THE IRVMC BY TOWING VESSEL OPERATORS

	24-hour contact number	Name of vessel moving barge(s)	Barge(s) name and official number	Type, name and amount of CDC onboard	Estimated time of departure from fleeting area or facility	Name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival	Reporting point	Estimated time of arrival (ETA) to next reporting point (If applicable)
(1) Upon point of entry into the RNA with a CDC barge	X	X	X	X	.....	X	X	X
(2) 4 hours before originating a voyage within the RNA with one or more CDC barges; but see exception in paragraph (d)(1)(ii) of this section.	X	X	X	X	X	X	.....	X
(3) Upon dropping off one or more CDC barges at a fleeting area or facility .....	.....	X	X					
(4) Upon picking up one or more additional CDC barges from a fleeting area or facility. ....	.....	X	X	X				
(5) At designated reporting points in 165.921(e) .....	.....	X	X	(¹)	.....	(¹)	X	X
(6) When ETA to a reporting point varies by 6 hours from previously reported ETA .....	.....	X	(¹)	(¹)	.....	.....	.....	X
(7) Any significant deviation from previously reported information (all that apply)	X	X	X	X	X	X	X	X
(8) Upon departing the RNA with a CDC barge (s) .....	.....	X	X	.....	.....	.....	X	
(9) When directed by the IRVMC	X	X	X	X	X	X	X	X

¹ If changed.

(g) Information to be reported to the IRVMC by fleeting area managers. Fleeting area managers responsible for

one or more CDC barges in the RNA must report the information required by

this section as set out in table 165.921(g) to this paragraph.

TABLE 165.921(G).—INFORMATION TO BE REPORTED TO THE IRVMC BY FLEETING AREA MANAGERS

	24-hour contact number	Barge(s) name and official number	Type, name and amount of CDC onboard	Location of CDC barge (fleeting area or facility)
(1) Once daily, all CDC barges in a fleeting area	X	X	X	X
(2) Upon moving one or more CDC barges within a fleeting area by a fleet tow boat .....	.....	X	X	X
(3) Any significant deviation from previously reported information (all that apply)	X	X	X	X
(4) When directed by the IRVMC	X	X	X	X

(h) *Alternative reporting.* The Ninth Coast Guard District Commander may consider and approve alternative methods to be used by a reporting party to meet any reporting requirements if—

(1) The request is submitted in writing to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio, 44199-2060; and

(2) The alternative provides an equivalent level of the reporting that which would be achieved by the Coast Guard with the required check-in points.

(i) Deviation from this section is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or the IRVMC.

Dated: September 29, 2003.

Ronald F. Silva,

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

[FR Doc. 03-25296 Filed 10-1-03; 3:55 pm]

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Cooper River and Tributaries, Naval Weapons Station Charleston, Charleston, SC

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending existing regulations to expand the authority of the Commanding Officer, Naval Weapons Station Charleston to restrict passage of persons, watercraft and vessels within currently designated restricted areas in the Cooper River and its tributaries in the vicinity of the Naval Weapons Station in Charleston, South Carolina. The purpose of the proposed change is to provide effective security in the area of the Naval Weapons Station.

EFFECTIVE DATE: November 5, 2003.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC, at (202) 761-4618, or Mr. Nathaniel Ball, Corps of Engineers, Charleston District, at (843) 329-8044.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the

Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations published at 33 CFR 334 by modifying 334.460(b)(6) to expand the authority of the Commanding Officer, Naval Weapons Station Charleston to restrict the passage of persons, watercraft and vessels within the Cooper River and its tributaries in the vicinity of the Naval Weapons Station in Charleston, South Carolina. The boundaries of restricted areas and danger zones identified in 33 CFR 334.460 (a) are unchanged. The regulation at 33 CFR 334.460(b)(6) is being amended to include restricted area (a)(8) of 334.460. The amended regulation will allow the Commanding Officer of the Naval Weapons Station to restrict the passage of persons, watercraft, and vessels, at his/her discretion in the interest of National Security until such time as he/she determines such restrictions may be terminated.

Procedural Requirements

a. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The Charleston District has prepared an Environmental Assessment (EA) for this action. The District has concluded, based on the minor nature of the proposed additional restricted area, that this action will not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA may be reviewed at the Charleston District

office listed at the end of **FOR FURTHER INFORMATION CONTACT** above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. The District has also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

e. Submission to Congress and the General Accounting Office

Pursuant to section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps of Engineers is amending 33 CFR part 334 as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

■ 2. Amend § 334.460 by revising paragraph (b)(6) to read as follows:

§ 334.460 Cooper River and tributaries at Charleston, SC.

* * * * *

(b) * * *

(6) In the interest of National Security, Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, may at his/her discretion, restrict passage of persons, watercraft and vessels in the areas described in paragraphs (a)(7), (a)(8) and (a)(11) of this section until such time as he/she determines such restriction may be terminated.

* * * * *

Dated: September 16, 2003.

Lawrence A. Lang,

Deputy Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 03-25205 Filed 10-3-03; 8:45 am]

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