

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[CGD09-05-001]

RIN 1625-AA11

Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area between Mile Markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal on the Illinois Waterway near Romeoville, IL. This temporary regulated navigation area will place navigational and operational restrictions on all vessels transiting through the demonstration electrical dispersal barrier located on the Chicago Sanitary and Ship Canal between Mile Markers 296.1 and 296.7. This regulated navigation area is necessary to protect vessels and their crews from harm as a result of electrical discharges emitting from the electrical dispersal barrier as vessels transit over it.

DATES: This temporary rule is effective from 3 p.m. (CST) January 13, 2005 until 12 p.m. (CST) June 30, 2005. Comments and related materials must reach the Docket Management Facility on or before March 13, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number [CGD09-05-001] to the U.S. Coast Guard Ninth Coast Guard District (map), 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. The Marine Safety and Analysis Branch (map) is the document management facility for this temporary rule and maintains the public docket for this rulemaking. Documents that become a part of this docket are available for inspection between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact Commander M. Gardiner, Marine Safety and Analysis Branch, Cleveland, at (216) 902-6047.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to submit comments and related materials. Comments and related materials must reach the Docket Management Facility on or before March 13, 2005.

Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09-05-001], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail or delivery to the docket management facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or 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. We may change this rule in view of them.

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**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This potential hazard to vessels and people only recently became apparent, and therefore we were unable to publish an NPRM followed by a final rule. At this point, it would be impracticable and contrary to the public interest to provide for notice and comment, due to the need to prevent the risk of electrocution to vessels and their crew/passengers. During the initial enforcement of this regulated navigation area, comments will be accepted and reviewed and may result in a modification to the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists to make this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to the public interest of ensuring the safety of persons and vessels, and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

On January 7, 2005, the U.S. Army Corp of Engineers, in close coordination

with the U.S. Coast Guard, conducted preliminary safety tests on the Chicago Sanitary and Ship Canal at Mile Marker 296.5 in the vicinity of the demonstration electrical dispersal barrier located on the canal near Romeoville, IL. This barrier was constructed to prevent Asian Carp from entering Lake Michigan through the Illinois River system by generating a low-voltage electric field across the canal. The Coast Guard and Army Corps of Engineers conducted field tests to ensure the continued safe navigation of commercial and recreational traffic across the barrier; however, results indicated a significant arcing risk and hazardous electrical discharges as vessels transited the barrier posing a significant risk to navigation through the barrier. To mitigate this risk, navigational and operational restrictions will be placed on all vessels transiting through the vicinity.

Discussion of Temporary Rule

Until this potential hazard to navigation can be rectified, the Coast Guard will require vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements. These requirements include: All vessels are prohibited from loitering in the vicinity of the electrical dispersal barrier. "Vicinity" of the electrical dispersal barrier is defined as the Chicago Sanitary and Ship Canal from the north side of the Romeo Highway Bridge at Mile Marker 296.1 to the aerial pipeline arch located at Mile Marker 296.7. Vessels may enter this section of the waterway with the sole purpose of transiting to the other side, and must maintain headway throughout the transit. All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the "vicinity" until subsequent field testing determines the waters in this area do not pose significant risk to human life. Vessels may not moor or lay up on the right or left descending banks. Towboats may not make or break tows. Vessels may not pass (meet or overtake) in the "vicinity" and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side. Commercial tows transiting the barrier must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

These restrictions are necessary for safe navigation of the barrier and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during recent safety tests conducted by the Army Corps of Engineers. Deviation

from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative.

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. It has not been reviewed by the Office of Management and Budget 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. This determination is based on the fact that traffic will still be able to transit through the RNA.

Small Entities

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate as more information becomes available.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can 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 consult the point of contact listed in **ADDRESSES**. 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 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 a categorical exclusion under section 2.B.2 of the Instruction. Therefore this rule is categorically excluded, under figure 2–1, paragraph 34(g) from further environmental documentation. This temporary rule establishes a regulated navigation area and as such is covered by this paragraph.

A final “Environmental Analysis Check List” and a final “Categorical

Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 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, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09.001 to read as follows:

§ 165.T09—001 Temporary Regulated Navigation Area between mile markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal located near Romeoville, IL.

(a) *Location.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL beginning at the north side of Romeo Road Bridge Mile Marker 296.1, and ending at the south side of the Aerial Pipeline Mile Marker 296.7.

(b) *Effective Period:* This rule is effective from 3 p.m. (CST) January 13, 2005 until 12 p.m. (CST) June 30, 2005.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.13 apply.

(2) All vessels are prohibited from loitering in the vicinity of the electrical dispersal barrier. “Vicinity” of the electrical dispersal barrier is defined as the Chicago Sanitary and Ship Canal from the north side of the Romeo Highway Bridge at Mile Marker 296.1 to the aerial pipeline arch located at Mile Marker 296.7. Vessels may enter this section of the waterway with the sole purpose of transiting to the other side, and must maintain headway throughout the transit. All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the “vicinity” until subsequent field testing determines the waters in this area do not pose significant risk to human life. Vessels may not moor or lay up on the right or left descending banks. Towboats may not make or break tows. Vessels may not pass (meet or overtake) in the “vicinity” and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side.

Commercial tows transiting the barrier must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(3) All persons and vessels shall comply with this rule and any additional instructions of the Ninth Coast Guard District Commander, or his designated representative.

Dated: January 13, 2005.

R.J. Papp,

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

[FR Doc. 05–1425 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 04–133]

RIN 1625–AA00

Safety Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones on the St. Johns River off the Main Street Bridge, the Acosta Bridge, and the Hart Bridge. These safety zones are necessary for the Super Night of Lights fireworks display scheduled on February 3, 2005, downtown Jacksonville and will protect participants, vendors, and spectators from the hazards associated with the launching of fireworks off the aforementioned bridges and cascading onto the St. Johns River. These temporary safety zones prohibit persons or vessels from entering the zone, unless authorized by the Captain of the Port Jacksonville or a designated representative.

DATES: This rule is effective from 9:45 p.m. to 10:45 p.m. on February 3, 2005.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket [COTP Jacksonville 04–133] and are available for inspection and copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida, 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Carol Swinson at Coast Guard Marine Safety Office Jacksonville, Florida, tel: (904) 232–2640, ext. 155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule’s effective date is contrary to public safety because immediate action is necessary to protect the public and waters of the United States.

For the same reasons, 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**. The Coast Guard will issue a broadcast notice to mariners and may place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

This rule is needed to protect spectator craft in the vicinity of the fireworks presentation from the hazards associated with transport, storage, and launching of fireworks. Anchoring, mooring, or transiting within these zones is prohibited, unless authorized by the Captain of the Port, Jacksonville, Florida. The temporary safety zone encompasses all waters 500 yards east and west of the Main Street Bridge, 500 yards east of the Acosta Bridge, and 500 yards west of the Hart Bridge.

Regulatory Evaluation

This regulation 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 cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their