

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

[CGD09–05–131]

RIN 1625–AA11

**Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a permanent regulated navigation area on the Chicago Sanitary and Ship Canal on the Illinois Waterway near Romeoville, IL. This permanent regulated navigation area places navigational and operational restrictions on all vessels transiting through the demonstration electrical dispersal barrier located on the Chicago Sanitary and Ship Canal. 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 rule is effective on January 1, 2006 at 12:01 a.m. local time.

**ADDRESSES:** 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 [CGD09–05–131] and are available for inspection or copying at Ninth Coast Guard District (dpw–1), 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. The Ninth Coast Guard District Waterways Planning and Development Section (dpw–1) 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, will become part of this docket and will be available for inspection or copying 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 CDR K. Phillips, Waterways Planning and Development Section, Ninth Coast Guard District, Cleveland, OH at (216) 902–6045.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On November 14, 2005, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (70 FR 69128). We received 2 letters containing a total of three comments on the

proposed rule. No public meeting was requested, and none was held.

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 Fish Barrier can cause significant arcing and hazardous electrical discharges, putting vessels and mariners that transit through it at risk. Any delay in establishing this regulation would increase the danger.

**Background and Purpose**

On January 7, 2005, the U.S. Army Corps of Engineers, in close coordination with the U.S. Coast Guard, conducted preliminary safety tests on the electrical dispersal barrier located at Mile Marker 296.5 of the Chicago Sanitary and Ship 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 serious risk to navigation through the barrier. To mitigate these risks, the Coast Guard established this final rule, which places navigational and operational restrictions on all vessels transiting through the vicinity.

On January 26, 2005 a regulated navigation area (RNA) was published in the **Federal Register** (70 FR 3625) as a temporary final rule. The temporary final rule was extended on August 10, 2005 (70 FR 46407). Testing has continued since the temporary regulation was first proposed in January 2005, but has not yet been completed. Preliminary results indicate that further tests and analysis are warranted and that this process may continue for an undetermined period of time.

**Discussion of Rule**

Until the potential electrical hazards can be rectified, the Coast Guard will require vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements. The regulated navigation area encompasses all waters of 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. The requirements placed on all vessels include: All vessels are prohibited from loitering in the

regulated navigation area; vessels may enter the regulated navigation area for 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 regulated navigation area; vessels may not moor or lay up on the right or left descending banks in the regulated navigation area; towboats may not make or break tows in the regulated navigation area; vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side; and commercial tows transiting the regulated navigation area 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 regulated navigation area and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during 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. The Commander, Ninth Coast Guard District will designate Captain of the Port, Lake Michigan as his designated representative for the purposes of this rule.

**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. This determination is based on the fact that traffic will still be able to transit through the RNA.

**Discussion of Comments**

The Coast Guard received three comments regarding this rule. One comment requested that the required Personal Flotation Device (PFD) be changed from a Type I to Type V with the understanding that commercial crews would only be on deck in the

event of unusual circumstances or an emergency. The Coast Guard disagrees with this recommendation. The Coast Guard has determined that the electrical voltage poses significant risks to human life with a high risk of causing immobility to a person in the water. The suggestion that a crew member would only be on deck in an emergency further increases the risk and the need for the Type I PFD. A Type I PFD is designed to provide support to the head so that the face of an unconscious, immobilized, or exhausted person is held above the water.

The second comment requested that the regulated navigation area remain temporary. In the alternative, the submitter requested that additional comments be permitted upon the release of further safety data, the deactivation of the temporary barrier, or the activation of the new barrier. The Coast Guard disagrees with this recommendation. While the barrier is in operation there are serious safety concerns, and the Coast Guard has not been given a date that final safety testing will be complete. Since the danger to mariners and vessels remains indefinitely, the Coast Guard has elected to make this rule permanent. If there are changes to the barrier or additional safety data becomes available, the Coast Guard may re-evaluate this rule. If additional data makes it necessary to amend this rule, the Coast Guard will follow notice and comment rulemaking procedures.

The third comment recommended that visual warnings be posted to alert towboat pilots well before the electrical dispersal barrier. The Coast Guard agrees with this comment. However, the Coast Guard does not agree that this rule needs to be modified. Warning signs are being designed and constructed by the Army Corps of Engineers. The warning signs will alert all waterway users and will be placed on right and left descending banks at both ends of the regulated navigation area (mile markers 296.7 and 296.1). The two signs on the right descending bank will be alert notices and will read "DANGER". The signs on the left descending bank will read "DANGER; ELECTRIC CHARGE IN WATER; DO NOT STOP, ANCHOR OR FISH; NO MOORING OR PASSING; TYPE 1 LIFEJACKET MUST BE WORN". These signs will be approximately 8 feet tall and 20 feet wide. The type and size of the lettering meets Army Corps of Engineers standards and will be similar to the safety signs found on all locks and dams. Installation of these signs is an Army Corps of Engineers project, therefore any party concerned with signage should contact that agency. The

Coast Guard will continue to work closely with all waterway users to assess the safety issues and the management of the regulated navigation area.

#### **Small Entities**

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

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information as to the number of small entities that may be affected. We did not receive any comments on this issue. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate whether a substantial number of small entities are affected as more information becomes available.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered 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 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 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 made a preliminary determination 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 we believe this rule should be categorically excluded, under figure 2–1, paragraph 34(g) from further environmental documentation. This 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**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### 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; 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 § 165.923 to read as follows:

#### § 165.923 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 between the north side of Romeo Road Bridge Mile Marker 296.1, and the south side of the Aerial Pipeline Mile Marker 296.7.

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

(2) All vessels are prohibited from loitering in the regulated navigation area.

(3) Vessels may enter the regulated navigation area for the sole purpose of transiting to the other side, and must maintain headway throughout the transit.

(4) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area.

(5) Vessels may not moor or lay up on the right or left descending banks of the regulated navigation area.

(6) Towboats may not make or break tows in the regulated navigation area.

(7) Vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side.

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

(c) *Compliance.* All persons and vessels shall comply with this rule and any additional instructions of the Ninth Coast Guard District Commander, or his designated representative. The Captain of the Port, Lake Michigan is a designated representative of the District Commander for the purposes of this rule.

Dated: December 19, 2005.

**R.J. Papp, Jr.,**

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

[FR Doc. 05–24538 Filed 12–27–05; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R04–OAR–2005–AL–0001–200520a; FRL–8014–9]

#### Approval and Promulgation of Implementation Plans; Alabama; Nitrogen Oxides Budget and Allowance Trading Program, Phase II

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Alabama on February 23, 2005. The revision responds to the EPA’s regulation entitled, “Interstate Ozone Transport: Response to Court Decisions on the Nitrogen Oxides (NO<sub>x</sub>) SIP Call, NO<sub>x</sub> SIP Call Technical Amendments, and Section 126 Rules,” otherwise known as the “NO<sub>x</sub> SIP Call Phase II.” This revision satisfies EPA’s rule that requires Alabama to submit NO<sub>x</sub> SIP Call Phase II revisions needed to achieve the necessary incremental reductions of NO<sub>x</sub>. The intended effect of this SIP revision is to reduce emissions of NO<sub>x</sub> in order to help attain the National Ambient Air Quality Standard (NAAQS) for ozone. The revision also corrects a typographical error and deletes an expired provision pertaining to open burning in Morgan County, Alabama in 2003.

**DATES:** This direct final rule is effective February 27, 2006 without further notice, unless EPA receives adverse comment by January 27, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2005–AL–0001, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Agency Web site:* <http://docket.epa.gov/rmepub/> RME, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Once in the system, select “quick search,” then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.