

Webster  
*Area of Application. Survey area plus:*  
 Missouri:  
 Barry  
 Barton  
 Benton  
 Bollinger  
 Butler  
 Camden  
 Cape Girardeau  
 Carter  
 Cedar  
 Dade  
 Dallas  
 Dent  
 Douglas  
 Hickory  
 Howell  
 Iron  
 Jasper  
 Lawrence  
 Madison  
 Maries  
 Miller  
 Mississippi  
 Moniteau  
 Morgan  
 New Madrid  
 Newton  
 Oregon  
 Ozark  
 Perry  
 Polk  
 Reynolds  
 Ripley  
 St. Clair  
 Scott  
 Shannon  
 Stoddard  
 Stone  
 Taney  
 Texas  
 Vernon  
 Wayne  
 Wright  
 Kansas:  
 Cherokee  
 Crawford

\* \* \* \* \*  
**OKLAHOMA**

\* \* \* \* \*  
**Tulsa**  
*Survey Area*

Oklahoma:  
 Creek  
 Mayes  
 Muskogee  
 Osage  
 Pittsburg  
 Rogers  
 Tulsa  
 Wagoner  
*Area of Application. Survey area plus:*  
 Oklahoma:  
 Adair  
 Cherokee  
 Choctaw  
 Craig  
 Delaware  
 Haskell  
 Kay  
 Latimer  
 Le Flore  
 McCurtain

McIntosh  
 Nowata  
 Okfuskee  
 Okmulgee  
 Ottawa  
 Pawnee  
 Pushmataha  
 Sequoyah  
 Washington  
 Arkansas:  
 Benton  
 Carroll  
 Crawford  
 Madison  
 Sebastian  
 Washington  
 Missouri:  
 McDonald  
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 [FR Doc. E9-2629 Filed 2-6-09; 8:45 am]  
**BILLING CODE 6325-39-P**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1412**

**RIN 0560-AH84**

**Direct and Counter-Cyclical Program and Average Crop Revenue Election Program**

*Correction*

In rule document E8-30763 beginning on page 79284 in the issue of December 29, 2008, make the following correction:

**§1412.53 [Corrected]**

On page 79299, in the third column, §1412.53(b)(1)(ii)(K) should read:  
(K) Other oilseeds—\$9.30/cwt.

[FR Doc. Z8-30763 Filed 2-6-09; 8:45 am]  
**BILLING CODE 1505-01-D**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2008-1247]

**RIN 1625-AA11**

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area and safety zone on the Chicago Sanitary and Ship Canal near Romeoville, IL.

This temporary interim rule places navigational and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the Army Corps of Engineers' electrical dispersal fish barrier system.

**DATES:** This temporary interim rule is effective from 11:59 p.m. on January 17, 2009, until September 30, 2009. Comments and related material must reach the Docket Management Facility on or before April 10, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2008-1247 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for Comments".

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216-902-6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-1247), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you

include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2008-1247" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-1247 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one 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

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the electric current in the water poses a safety risk to commercial and recreational boaters who transit the area. Likewise, 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** because of the safety risk to commercial and recreational boaters who transit the area. The following discussion and the Background and Purpose section below provides additional support of the Coast Guard's determination that good causes exist for not publishing a NPRM and for making this rule effective less than 30 days after publication.

In 2002, the Army Corps of Engineers energized a demonstration electrical dispersal barrier located in the Chicago Sanitary and Ship Canal. The demonstration barrier, commonly referred to as "Barrier I," generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal. In 2006, the Army Corps completed construction of a new barrier, "Barrier IIA." Barrier IIA is designed to operate continuously at one-volt per inch, and can operate at higher levels. Barrier IIA is slated to undergo additional testing to determine optimal operating levels. Because of its design, Barrier IIA can generate a more powerful electric field, over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008, at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-

volt per inch level. Operating Barrier IIA at four-volts per inch (the maximum capacity) presents a higher risk; however, there is no data yet to indicate how much higher. The Coast Guard and Army Corps developed regulations and safety guidelines, with stakeholder input, which addressed the risks and hazards associated with operating the barriers at the one-volt per inch level. These regulations were published in 33 CFR 165.923, 70 FR 76692 (Dec 28, 2005) and in a series of temporary final rules: 71 FR 4488 (Jan 27, 2006); 71 FR 19648 (Apr 17, 2006); 73 FR 33337 (Jun 12, 2008); 73 FR 37810 (Jul 2, 2008); 73 FR 45875 (Aug 7, 2008); and 73 FR 63633 (Oct 27, 2008).

The Army Corps of Engineers recently notified the Coast Guard that it plans to activate Barrier IIA on a full-time basis starting in middle to late January 2009. Both Barrier IIA and Barrier I will operate at the same time; hence, Barrier I will provide a redundant back up to Barrier IIA.

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

To mitigate the safety risks created by operation of the barriers, navigational and operational restrictions are necessary for all vessels transiting through the navigable waters located adjacent to and over the barriers. Specifically, and as discussed in more detail in the Discussion of the Rule section below, the Coast Guard is establishing a regulated navigation area, which requires vessels to adhere to specified operational and navigational requirements while inside the regulated navigation area. In addition, the Coast Guard will occasionally enforce a safety zone, which prohibits the movement of all vessels and persons through the electrical dispersal barriers during tests of Barrier IIA at voltages higher than one-volt per inch.

#### Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the Army Corps of Engineers to conduct a demonstration project to identify an

environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the Chicago Sanitary and Ship Canal. The Army Corps of Engineers selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA will be up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for approximately seven weeks in September and October 2008, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is planned; Barrier IIB would augment the capabilities of Barriers I and IIA.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of the Barrier I. During subsequent Army Corps of Engineers safety testing in January 2005, sparking was observed upon metal-to-metal contact between two independent barges in the barrier field.

The electric current in the water poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU final report concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

A Safety Work Group facilitated by the Coast Guard and in partnership with the Army Corps of Engineers and industry initially met in February 2008 and focused on three goals: (1) Education and public outreach, (2) keeping people out of the water, and (3) egress/rescue efforts. The Safety Work Group has regularly been attended by eleven stakeholders. Key partners include the American Waterways Operators, Illinois River Carriers Association, Army Corps of Engineers Chicago District, Coast Guard Marine Safety Unit Chicago, Coast Guard Sector Lake Michigan/Captain of the Port Lake

Michigan, and the Ninth Coast Guard District. During the past twelve months, the Coast Guard has hosted five Safety Work Group meetings with full participation from stakeholders.

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

In addition to this temporary interim rule, the Coast Guard intends to publish a Notice of Proposed Rulemaking (NPRM). The NPRM will propose establishing a permanent regulated navigation area and safety zone that is identical to the regulated navigation area and safety zone established by this temporary interim rule. We encourage the public to participate in the rule proposed by our NPRM by submitting comments and related materials to the docket. The NPRM will contain information on how to submit comments and will be part of the docket number for this rulemaking (USCG–2008–1247). To view the NPRM, once published, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on “Search for Dockets,” and enter the docket number for this rulemaking (USCG–2008–1247) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Discussion of Rule

This temporary interim rule will suspend 33 CFR 165.923 and will place additional restrictions on all vessels transiting through the navigable waters located adjacent to and over the electrical dispersal barriers located on the Chicago Sanitary and Ship Canal. The regulated navigation area encompasses all waters of the Chicago Sanitary and Ship Canal located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles

northeast of the Romeo Road Bridge). The requirements placed on commercial vessels include: (1) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions and work out passing arrangements on either side; (2) commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow; and (3) all up-bound and down-bound barge tows that contain one or more red flag barges must be assisted by a bow boat until the entire tow is clear of the regulated navigation area. Red flag barges are barges certificated to carry, in bulk, any hazardous material as defined in 46 CFR § 150.115. Currently, 46 CFR § 150.115 defines hazardous material as:

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

The Army Corps of Engineers has informed the Coast Guard that the Corps will continue to contract bow boat assistance for barge tows containing one or more red flag barges. The Army Corps of Engineers has also advised the Coast Guard that they have funds to contract bow boat assistance through September 30, 2009. Operators of tows containing one or more red flag barges should notify the bow boat contractor at least two hours prior to the need for assistance. The tow operator should then remain in contact with the contractor after the initial call for bow boat assistance and advise the contractor of any delays. Information on how to arrange for bow boat assistance may be obtained by contacting the Army Corps of Engineers at 312–846–5333, during normal working hours. The Coast Guard will also publish this information in its Local Notice to Mariners.

This temporary interim rule places additional restrictions and operating requirements on all vessels within a smaller portion of the regulated navigation area, specifically, the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). Within this smaller area, this temporary interim rule prohibits all vessels from loitering, mooring or laying up on the right or left

descending banks, or making or breaking tows on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). In addition, vessels may only enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge) for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). The temporary interim rule also requires all personnel on open decks to wear a Coast Guard approved Type I personal flotation device while on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

These restrictions are necessary for safe navigation of the regulated navigation area and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during safety tests conducted by the U.S. Army Corps of Engineers. Deviation from this temporary interim rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. The Commander, Ninth Coast Guard District designates Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago, as his designated representatives for the purposes of the regulated navigation area.

A safety zone will be enforced during tests of Barrier IIA at voltages higher than one-volt per inch. This safety zone, which encompasses all the waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge), will be enforced by the Captain of the Port Lake Michigan, for such times before, during, and after barrier testing as he or she deems necessary to protect mariners and vessels from damage or injury. The

Captain of the Port Lake Michigan will cause notice of enforcement or suspension of enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is suspended. In addition, Captain of the Port Lake Michigan maintains a telephone line that is manned 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the safety zone by contacting the Captain of the Port Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at (414) 747-7182.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This 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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the following: (1) Vessel traffic may continue to transit through the regulated navigation area; (2) the Army Corps of Engineers intends to pay the cost of the bow boat required by barge tows containing one or more red flag barges during the time this rule is effective; (3) the safety zone will only be enforced on an occasional basis; and (4) vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone when the safety zone is enforced.

As discussed in the "Regulatory Information" section above, the Coast Guard has established and enforced temporary safety zones, which prohibited all vessels from entering the waters located over and adjacent to the electric dispersal barriers during testing. During past safety zone enforcement, the Coast Guard, in coordination with the Army Corps of Engineers, provided advance notice of the waterway closure

and monitored vessel traffic during closure of the waterway. During these prior tests, testing occurred during three, two-hour blocks of time. In between these two-hour blocks of time, vessel traffic was granted permission by the Captain of the Port to transit through the safety zone.

Exact dates, times and duration of tests have not yet been finalized by the Army Corps for testing Barrier IIA at peak field strength. Nevertheless, the Coast Guard will coordinate with the Army Corps and waterway users, as it has done during past testing. Coordination efforts will include providing as much advance notice as possible to waterway users of planned closures and working with the Army Corps to structure testing dates, times and duration so as to minimize delays to vessels that transit the 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.

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 would affect the following entities, some of which might be small: The owners and operators of vessels intending to transit or anchor in a portion of the Chicago Sanitary and Ship Canal.

This regulated navigation area and safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) Vessel traffic may continue to transit through the regulated navigation area; (2) the Army Corps of Engineers intends to pay the cost of the bow boat required by barge tows containing one or more red flag barges during the time this rule is effective; (3) the safety zone will only be enforced on an occasional basis; and (4) vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone when the safety zone is enforced. The Coast Guard will give notice to the public, using all appropriate means to effect the widest publicity among the affected segments of the public, when the safety zone is enforced and when enforcement is suspended.

As noted above, the Coast Guard intends to publish an NPRM and specifically seek public comment as to a permanent regulated navigation area and safety zone. The Coast Guard encourages public comment regarding the potential economic impact of the regulated navigation area and safety zone.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling 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 Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of the category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of regulated navigation areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

**§ 165.923 [Suspended]**

■ 2. Section 165.923 is suspended from January 18, 2009 until September 30, 2009.

■ 3. A new temporary § 165.T09-1247 is added as follows:

**§ 165.T09-1247 Regulated Navigation Area and Safety Zone, Chicago Sanitary and Ship Canal, Romeoville, IL.**

(a) *Regulated Navigation Area.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.0

(approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge).

(1) *Definitions.* The following definitions apply to this section:

*Designated representatives* means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

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

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

*Bow boat* means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the regulated navigation area. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

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

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

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

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

(v) All vessels are prohibited from loitering between the Romeo Road

Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(vi) Vessels may enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge) for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(vii) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(viii) Vessels may not moor or lay up on the right or left descending banks of the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(ix) Towboats may not make or break tows if any portion of the towboat or tow is located in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(3) *Compliance.* All persons and vessels must comply with this section and any additional instructions or orders of the Ninth Coast Guard District Commander, or his designated representatives.

(4) *Waiver.* For any vessel, the Ninth Coast Guard District Commander, or his designated representatives, may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

(b) *Safety Zone.* (1) The following area is a safety zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

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

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

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

(iii) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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

Dated: January 16, 2009.

**D.R. Callahan,**

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

[FR Doc. E9-2408 Filed 2-6-09; 8:45 am]

**BILLING CODE 4910-15-P**