



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG-2017-1095]**

**RIN 1625--AA11; 1625-AA00**

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the navigational and operational restrictions of the Regulated Navigation Area (RNA) on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, Illinois and remove the redundant Safety Zone currently in place.

The purpose of this amendment is to improve safety and clarify regulations for vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' Aquatic Nuisance Species electric dispersal barrier system (EDBS).

**DATES:** Comments and related material must be received by the Coast Guard on or before

**[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL**

**REGISTER].**

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-1095

using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public

Participation and Request for Comments" portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant John Ramos, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986-2131, email John.E.Ramos@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
CSSC	Chicago Sanitary and Ship Canal
DHS	Department of Homeland Security
EDBS	Electric Dispersal Barrier System
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
RNA	Regulated Navigation Area
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The purpose of this proposed rule is to eliminate a redundant safety zone and remove several requirements from a Regulated Navigation Area that are no longer necessary. There currently exists, in 33 CFR 165.923, certain navigational, environmental, and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' Aquatic Nuisance Species electric dispersal fish barrier. 33 CFR

165.923(a)(1) establishes a safety zone in the CSSC from mile marker 296.1 to mile marker 296.7. Additionally, 33 CFR § 165.923(b)(1) establishes a regulated navigation area from mile marker 295.5 to mile marker 297.2. There also exists, in 33 CFR 165.930, a safety zone from mile marker 286.0 to mile marker 333.3 that includes the totality of the safety zone in 33 CFR 165.923(a)(1), rendering it redundant.

In 2013, the U.S. Coast Guard Research and Development Center completed a marine safety risk assessment for the waters of the CSSC in the vicinity of the Aquatic Nuisance Species EDDBS near Romeoville, Illinois. The overarching goal of the risk assessment was to determine the adequacy of present risk mitigation strategies and, if necessary, recommend alternatives to the present strategies. The report generated at the conclusion of the risk assessment noted apparent confusion among waterway users regarding the boundaries and requirements for the safety zone and RNA outlined in 33 CFR 165.923. The report also identified certain requirements still in effect which had basis in the existing Rule that have since changed over the period of the rule and may longer currently apply. This Notice of Proposed Rulemaking addresses recommended amendments to the regulations based on the report's conclusions and recommendations.

The proposed amendments are intended to improve safety, reduce confusion and eliminate unnecessary burden to vessels transiting the safety zone and RNA of the CSSC in the vicinity of the EDDBS near Romeoville, Illinois. The Coast Guard is issuing this proposed rule under 33 U.S.C. 1231; 46 U.S.C. Chapter 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

### **III. Discussion of Proposed Rule**

The purpose of safety zone delineated in § 165.923(a)(1) is to inhibit the potential

transfer of live Silver or Asian carp, viable eggs or gametes into the waterway north of the electric barrier. To serve this purpose, the safety zone requirements outlined in 33 CFR 165.923(a)(2) restrict vessels transiting with non-potable water on board if they intend to release that water in any form within or on the other side of the safety zone. A larger safety zone, described at 33 CFR 165.930(a)(2), also encompasses this same area. That safety zone, however, does not contain regulations prohibiting vessels from transiting the zone if they have any non-potable water onboard and intent to release that water within or beyond the safety zone.

The Coast Guard also proposes to eliminate the CSSC safety zone outlined in 33 CFR 165.923(a). This revision would eliminate redundancy currently existing in regulations because the CSSC is already regulated by the larger safety zone delineated in 33 CFR 165.930(a)(2). The requirements in 33 CFR 165.923(a)(2) for the transit of non-potable water would be preserved, but incorporated into the CSSC's RNA regulations in what is now 33 CFR 165.923(b)(2). Therefore, 33 CFR 165.923(b) will become 33 CFR 165.923(a) with the elimination of the safety zone. The following paragraphs describe additional changes that will be made to the RNA regulations.

The Coast Guard proposes to remove the RNA's bow boat requirement in 33 CFR 165.923(b)(2)(ii)(C). The RNA currently requires that all up-bound and down-bound tows that consist of barges carrying flammable liquid cargoes (Grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) engage the services of a bow boat at all times until the entire tow is clear of the RNA. The original bow boat requirement intended to reduce the possibility of a spark-induced event due to allision between a barge carrying flammable liquid cargo and barges at the Will County

Generating Station Coal Wharf (RDB MM 296.0) while the facility conducted coal loading and barge fleeting. At times barge fleets were three-wide (approximately 105 feet), extending into the 160-wide cut, less than 500 feet downstream of Barrier II-A. Since barge loading and fleeting ceased in September 2012, the basis for this requirement no longer exists.

The Coast Guard also proposes to modify the requirement in 33 CFR 165.923(b)(2)(ii)(E) that commercial tows be made up with only wire rope to ensure electrical connectivity between all segments of the tow. The purpose of this requirement is to ensure electrical connectivity between all segments of the tow in order to prevent arcing while transiting the electric barrier and to prevent high contact potentials between vessels in the tow. However, the Coast Guard recognizes that adequate means of securing a tow configuration are not exclusive to the use of wire rope and towboats frequently use high-tensile strength aramid, high-modulus polyethylene, or composite fiber ropes (“soft-lines”) as wing-wires or face-wires, and occasionally as barge lashings. Government observers have seen towboats use a single, wire-rope from barge winch to towboat h-bitt, thus providing adequate electrical connectivity, if sufficiently taut, and contacting bare-metal surfaces. The Coast Guard thus proposes to continue to require that commercial tows transiting the RNA ensure the maintenance of electrical connectivity between all segments of the tow through use of wire rope, but allow use of soft lines to be used in addition to secure a tow. To account for use of soft-lines, the Coast Guard proposes to eliminate the requirement that a tow exclusively use wire rope, by removing the words “with only” from the subsection and allowing an appropriate alternative.

Finally, the Coast Guard proposes to add a requirement to the RNA regulations that all vessels transit the RNA at a “no-wake” speed. Currently, the RNA does not provide a

maximum safe speed for vessels transiting the RNA. Throughout the course of the marine risk assessment, the project team ascertained that the largest marine safety risk is electric shock to a person in the water. Video recording and shore-observer accounts indicate that many, smaller recreational vessels transit the EDDBS at a speed that generates significant wake. Also, light-boat transits drag a wake that causes surging of barges moored to the loading facility just north of the pipeline arch. A no-wake zone would reduce this risk not only to persons aboard vessels, but also to persons working ashore alongside the RNA.

The aforementioned changes to the RNA regulations would require a slight reordering of what is now 33 CFR 165.923(b)(2)(ii)(A) – (K). With the removal of the safety zone, these regulations would be found in 33 CFR 165.923(a). The removal of the bow boat requirement in 33 CFR 165.923(b)(2)(ii)(C) would cause the other requirements to move up a letter, becoming the new 33 CFR 165.923(a)(2)(ii)(C)-(J). The “no wake” requirement would then become the new 33 CFR 165.923(a)(2)(ii)(K) and the requirements for the transit of non-potable water would be added in a new section, 33 CFR 165.923(a)(2)(ii)(L).

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of the statutes and E.O.s, and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

E.O. 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget, and pursuant to OMB guidance it is exempt from the requirements of E.O. 13771. As this proposed rule is anticipated to not be a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

The proposed rule is not a significant regulatory action because this is an updated version with minor changes to an already existing rule. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed revision of the safety zone and RNA will not have a significant economic impact on a substantial number of small entities because the proposed revision

imposes minor additional requirements on industry; and provides clarity to preexisting requirements by removing redundancies. The proposed rule, by removing the bow boat requirement due the ceased barge loading and fleeting operations, would in turn reduce regulated costs.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that

it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. 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 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under DHS Management Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves revisions of the safety zone and RNA that provide clarity to preexisting requirements. Normally such actions are categorically

excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L60 pertains to establishing, disestablishing, or changing Regulated Navigation Areas and Safety Zones. A preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 proposes to amend 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.923 to read as follows:

§ 165.923 Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL  
(a) Regulated Navigation Area. (1) The following is a regulated navigation area (RNA): all waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.5 and mile marker 297.2.

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

(ii) Vessels that comply with the following restrictions are permitted to transit the RNA:

(A) Vessels must be greater than 20 feet in length.

(B) Vessels must not be a personal or human powered watercraft (i.e. jet skis, waver runners, kayaks, row boats, etc.).

(C) Vessels engaged in commercial service, as defined in 46 U.S.C 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITÉ call when approaching the RNA to announce intentions and work out passing arrangements.

(D) Commercial tows transiting the RNA must use wire rope or appropriate alternatives to ensure electrical connectivity between all segments of the tow.

(E) All vessels are prohibited from loitering in the RNA.

(F) Vessels may enter the RNA 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 RNA.

(G) Except for law enforcement and emergency response personnel, all personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device.

(H) Vessels may not moor or lay up on the right or left descending banks of

the RNA.

(I) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

(J) Persons onboard any vessel transiting the RNA in accordance with this rule or otherwise are advised they do so at their own risk.

(K) All vessels transiting the RNA are required to transit at a no wake speed but still maintain bare steerageway.

(L) Non-potable water. (i) All vessels are prohibited from transiting the restricted navigation area with any non-potable water on board if they intend to release that water in any form within, or on the other side of the restricted navigation area. Non-potable water includes, but is not limited to, any water taken on board to control or maintain trim, draft, stability, or stresses of the vessel. Likewise, it includes any water taken on board due to free communication between the hull of the vessel and exterior water. Potable water is water treated and stored aboard the vessel that is suitable for human consumption.

(ii) Vessels with non-potable water on board are permitted to transit the restricted navigation area if they have taken steps to prevent the release, in any form, of that water in or on the other side of the restricted navigation area. Alternatively, vessels with non-potable water on board are permitted to transit the restricted navigation area if they have plans to dispose of the water in a biologically sound manner.

(iii) Vessels with non-potable water aboard that intend to discharge on

the other side of the restricted navigation area must contact the Coast Guard's Ninth District Commander or his or her designated representatives prior to transit and obtain permission to transit and discharge. Examples of discharges that may be approved include plans to dispose of the water in a biologically sound manner or demonstrate through testing that the non-potable water does not contain potential live Silver or Asian carp, viable eggs, or gametes.

(iv) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone by vessels with non-potable water on board is prohibited unless authorized by the Coast Guard's Ninth District Commander, his or her designated representatives, or an on-scene representative.

(v) The Captain of the Port, Lake Michigan, may further designate an “on-scene” representative. The Captain of the Port, Lake Michigan, or the on-scene representative may be contacted via VHF–FM radio Channel 16 or through the Coast Guard Lake Michigan Command Center at (414) 747–7182.

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

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

*On-scene representative* means any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan, to act on

his or her behalf. The on-scene representative of the Captain of the Port, Lake Michigan, will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be onshore and will communicate with vessels via VHF-FM radio or loudhailer.

*Vessel* means every description of watercraft of other artificial contrivance used, or capable or being used, as a means of transportation on water. This definition includes, but is not limited to, barges.

(c) Compliance. All persons and vessels must comply with this section and any additional instructions or orders of the Coast Guard's Ninth District Commander or his or her designated representatives. Any person on board any vessel transiting this RNA in accordance with this rule or otherwise does so at his or her own risk.

(d) Waiver. For any vessel, the Coast Guard's Ninth District Commander or his or her 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.

Dated: January 11, 2018

J. M. NUNAN  
Rear Admiral, U. S. Coast Guard,  
Commander, Ninth Coast Guard District.  
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