



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1095]

RIN 1625-AA11

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

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard Ninth District Commander is amending the navigational and operational restrictions of the Regulated Navigation Area (RNA) on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, Illinois, and removing 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: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-1095 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this 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 Information and Regulatory History

The purpose of this 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. Title 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 EDBS 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 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 no longer apply.

On January 30, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL” (USCG-2017-1095), 83 FR 4171. The NPRM discussed the need for the rule and invited the public to comment on the proposed regulatory action. During the comment period that ended April 30, 2018, we received two comments. One comment was not relevant to the proposed rule. The second comment, from the American Waterways Operators, stated support for the proposed RNA amendments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under 33 U.S.C. 1231.

The purpose of this rulemaking is to address recommended amendments to the regulations based on the aforementioned report’s conclusions and recommendations. The changes 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 EDBS near Romeoville, Illinois.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published January 30, 2018. Other than some minor stylistic changes, there are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The purpose of the 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 for the transit of non-potable water.

The Coast Guard will eliminate the CSSC safety zone outlined in 33 CFR 165.923(a)(1). This revision eliminates redundancy in regulations by using the larger safety zone delineated in 33 CFR 165.930(a)(2) to regulate the CSSC. The requirements in 33 CFR 165.923(a)(2) for the transit of non-potable water will 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 made to the RNA regulations.

The Coast Guard will 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 was 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), extended 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 is modifying the requirement in 33 CFR 165.923(b)(2)(ii)(E) that require 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 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 will 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 proposed to eliminate the requirement that a tow exclusively use wire rope, by removing the words “with only” from the paragraph and allowing an appropriate alternative.

Finally, the Coast Guard will 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 recordings and shore-observer accounts indicate that many, smaller recreational vessels transit the EDBS 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 will 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 will require a slight reordering of what is now 33 CFR 165.923(b)(2)(ii)(A) through (K). With the removal of the safety zone, these regulations will be found in 33 CFR 165.923(a). The removal of the bow boat requirement in 33 CFR 165.923(b)(2)(ii)(C) will cause the other requirements to move up a letter, becoming the new 33 CFR 165.923(a)(2)(ii)(C) through (J). The “no wake” requirement will then become the new 33 CFR 165.923(a)(2)(ii)(K) and the requirements for the transit of non-potable water will be added in a new 33 CFR 165.923(a)(2)(ii)(L).

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders

related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 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.

Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The rule updates an already existing rule. It adds minor changes to that already existing rule. These changes involve the elimination of a redundant safety zone, the removal of several requirements from a Regulated Navigational Area that are no longer necessary, and adds a “no wake” requirement to the safety zone. Each of these is discussed in greater depth below. 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. A summary of the reasoning for this is provided below. For a more thorough explanation of the reasoning the reader is advised to refer to the NPRM on this rule that was published in the Federal Register on January 30, 2018.

This final rule eliminates the CSSC safety zone outlined in 33 CFR 165.923(a)(1). This will reduce redundancy in regulations as the CSSC safety zone is already regulated in an equivalent manner by the larger safety zone delineated in 33 CFR 165.930(a)(2). Hence it is expected that there will be no cost impact associated with this change. In addition, it will reduce confusion and uncertainty that the public may face. The American Waterways Operators (AWO), in a comment made to the docket, agrees with this assessment.¹ The AWO, in its comment, stated “removing the redundant safety zone will decrease confusion for vessels operators in the transiting area”.

A second change made by this rule is the incorporation of the requirements for the transit of non-potable water, contained in 33 CFR 165.930(a)(2), into 33 CFR 165.923(b)(2). As this is only a move of the water transit requirements from one section of the CFR to another part of the CFR no costs experienced. In addition, the public will face less uncertainty due to the reduction of overlapping regulatory requirements.

A third change the rule will make will be the elimination of the RNA’s bow boat requirement, contained in 33 CFR 165.923(b)(2)(ii)(C). The RNA currently requires that all up and down bound tows that consist of barges carrying flammable liquid cargoes engage the services of a bow boat at all times until the entire tow is clear of the RNA.² The purpose of this requirement of 33 CFR 165.923(b)(2)(ii)(C) was 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 Warf (RDB MM 296.0) while the facility conducted coal loading and barge fleeting. As barge loading and fleeting at this facility stopped in September 2012, the basis of this requirement no longer

¹ Public comment received from the American Waterways Operators in response to the NPRM on this rule, dated April 30, 2018. A copy of this can be found in the docket for this rule.

² For a detailed list of the flammable liquid cargoes covered, please reference the NPRM for this rule.

exists. Hence there are expected to be reduced costs, for the regulated public, associated with the removal of this requirement.³

A fourth change involves the modification of the requirement in 33 CFR 165.923(b)(2)(ii)(E) relating to wire ropes used in commercial tows. Currently this requires that only wire rope be used in commercial tows. The purpose is to ensure electrical connectivity between all segments of the tow during the duration of the tow. This reduces the possibility of an accident stemming from the loss of power to any segment of the tow. However, the Coast Guard recognizes that there are high-tensile strength aramid, high-modulus polyethylene or composite fiber ropes (“soft-lines”) that also provide adequate electrical connectivity. The modification hence expands the ability of in-scope vessels to use these forms of ropes as well as wire ropes. This, in turn, provides vessel owners greater flexibility in terms of the type of ropes they use at with no additional cost being imposed by the regulation.

Lastly, the Coast Guard proposed to add a requirement to the RNA regulations that all vessels transit the RNA at a “no-wake” speed. The new “no-wake” requirement is contained in the new 33 CFR 165.923(a)(2)(ii)(K). Currently, the RNA does not provide a maximum safe speed for vessels transiting the RNA. This “no-wake” requirement is expected to reduce the danger posed by electrocution to persons on board vessels or falling overboard as well as to persons walking alongside the RNA on shore.⁴ Wakes

³ The AWO, in a letter in response to the NPRM for this final rulemaking (dated April 30, 2018 and contained in the docket for the NPRM), agreed with this conclusion. It stated “[the] AWO greatly appreciates the removal of the bow boat requirement for all tows moving flammable liquid cargoes These added operational costs have been a burden to our customers, increasing cost to consumers. The Coast Guard’s proposal to eliminate the bow boat requirement will benefit the economic well-being of the towing industry, its customers, and the national economy”.

⁴ The AWO, in a letter dated April 30, 2018, in response to the NPRM for this final rule (a copy can be found in the docket accompanying this NPRM) agrees with the Coast Guard’s assessment. The AWO writes: “AWO applauds the Coast Guard’s proposal to require all vessels to transit the

currently caused by vessels exceeding a “no-wake” speed carry this danger because, in the RNA, the Aquatic Nuisance Species electric dispersal fish barrier generates a highly charged electrical field.

The Coast Guard received two comments in response to the NPRM published with respect to this final rule. One comment was not relevant to the proposed rule. The second comment, from the American Waterways Operators, stated that it agreed with a number of the proposed RNA amendments made in the NPRM (and included in this final rule). The AWO’s comments in favor of many of the proposed changes have already been mentioned above. The AWO had no negative comments in response to any of the proposed RNA amendments.

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 received no comments from the Small Business Administration on this rulemaking. 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.

RNA at a “no-wake” speed to help mitigate many of the safety risks associated with transiting the Electric Dispersal Barrier System (EDBS). Located near Romeoville, Illinois, the EDBS is the only location the Coast Guard will not rescue individuals who fall overboard due to the unsafe conditions for its highly-trained personnel. Studies conducted by the U.S. Navy confirmed a 50% fatality rate if an individual falls into the electrified water. Given the extreme dangers associated with the EDBS, towboat operators are extremely cautious when transiting the RNA. Unfortunately, towboat operators have encountered recreational vessels operating at speeds inside the RNA that pose serious safety risks to surrounding vessels and crew. By introducing a no-wake speed, all vessels will be required to transit the area in a safe and responsible manner.”

The 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. This rule, by removing the bow boat requirement due to the ceased barge loading and fleeting operations, is expected to reduce regulated costs.

The increased flexibility provided to small entity vessel owners and operators by permitting them to use, in addition to wire ropes, high-tensile strength aramid, high-modulus polyethylene or composite fiber ropes (“soft-lines”) is also expected to have no cost impact on them while simultaneously providing them with greater flexibility on the types of wires they can use.

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.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) nor will it modify an existing collection.

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 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 rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined 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 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 Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.

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. 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 and regulations.* (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)(i) The general regulations contained in § 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)(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.

(2) 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.

(3) 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.

(4) In accordance with the general regulations in § 165.23, 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.

(5) 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: July 16, 2018.

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

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