

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

[Docket No. USCG-2009-1052]

RIN 1625-AA00; 1625-AA87

Safety and Security Zone, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety and security zone on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This temporary final rule is intended to restrict all vessels from transiting the navigable waters of the CSSC. The safety and security zone is necessary to protect the waters, waterway users and vessels from hazards associated with the U.S. Army Corps of Engineers (USACE) electrical dispersal barrier and for the preparation and safe application of a fish toxicant during a period of time when the barrier will be disabled to conduct maintenance.

DATES: *Effective Date:* In this rule, § 165.923 is suspended and a new temporary section, § 165.T09-1052, is added in the CFR effective December 10, 2009 until 5 p.m. on December 18, 2009. This rule is effective with actual notice for purposes of enforcement from 5 p.m. on November 30, 2009 to 5 p.m. on December 18, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-1052 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-1052 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final 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:**Regulatory Information**

The Coast Guard is issuing this temporary final 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) because the emergent planning and execution of maintenance to Barrier IIA by the USACE and the preventative application of the fish toxicant (rotenone), under the direction of the Illinois Department of Natural Resources (IDNR) and the federal coordination of the U.S. Environmental Protection Agency (EPA) resulted in good cause for not publishing an NPRM as there was insufficient time for proper notice. During IDNR's deployment of rotenone, the Coast Guard will enact a safety and security zone to provide for the safety and security of the waters, the waterway facilities and the vessels operating between the Lockport Lock and Dam (mile marker 291) and vicinity of the Ruby Street Bridge (mile marker 288.6).

The application of rotenone to the CSSC will ensure Asian carp do not transit across the fish barrier when Barrier IIA is taken off line and Barrier I, which only operates at one volt per inch, is the sole prophylactic from preventing the Asian carp from entering the Great Lakes. Preparation of the CSSC before application of rotenone is essential in preventing the Asian carp from surviving the fish toxicant. IDNR reports indicate that vessels moored along the Canal wall could create pockets or eddies where the fish toxicant is not able to reach all of the Asian Carp necessitating the Captain of the Port (COTP) Sector Lake Michigan to order their immediate removal from the safety and security zone. Exceptions may possibly be granted upon the review of COTP Sector Lake Michigan.

Rotenone has potential for adverse effects on humans. As such, delaying this rule would be contrary to the public interest of ensuring the safety and security of waterway users and vessels during the preparations, application and clean-up from the use of rotenone.

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 and security risk to the waters, commercial vessels and recreational boaters who transit the area. The following discussion and the Background and Purpose section below provide additional support of the Coast Guard's determination that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication.

In 2002, the USACE 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 USACE completed construction of a new barrier, "Barrier IIA." Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to immediately energize the barrier to two-volts per inch without prior testing.

In October of 2009, the USACE notified the Coast Guard that barrier IIA needed to be shut-down for required maintenance. As a result, the IDNR, in the coordination of the EPA, will apply rotenone to the CSSC to ensure Asian Carp do not transit through the CSSC while Barrier IIA is disabled. The Coast Guard's understanding is that the application of the rotenone will take approximately fifteen (15) hours followed by neutralizing and clean-up. The application, neutralizing and clean-up is expected to take a minimum of five days and a maximum of ten (10) days. For any questions related to the application of rotenone, please contact Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes National Program Office, 77 W. Jackson Blvd., Chicago, IL 60604, at (312) 353-6316.

The timing of the decision to use rotenone during the maintenance did not provide an opportunity for full notice and comment period. Until on-scene preparations begin on December 2, 2009 for the application of rotenone, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to pass over the fish barrier while it is operating at the two volt per inch level. Once preparations begin on December 2, 2009, until clean-up is complete which at the earliest will be December 7 but may last until December 18 no vessels, except those being used for the rotenone application and clean-up, will be permitted to enter or remain in the safety and security zone. As areas become neutralized and the necessary clean up action has been completed, the Captain of the Port Sector Lake Michigan will re-open certain portions of the waterway in an effort to minimize commerce disruption.

Prior to December 2, 2009, vessels engaging in normal operations are permitted to transit through the safety and security zone. After December 2, 2009, all vessels desiring to enter the safety and security zone must receive permission from the Captain of the Port Sector Lake Michigan to do so and must follow all orders from the Captain of the Port Sector Lake Michigan or her designated on-scene representative while in the zone. As soon as the rotenone clean-up efforts are complete, the Captain of the Port Sector Lake Michigan will notify waterway users by all appropriate means to effect the widest publicity among the affected segments of the public that vessels engaged in normal operations are again being permitted to transit through the security and safety zone.

The Captain of the Port Sector Lake Michigan maintains a live radio watch on VHF-FM Channel 16 and 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 Sector Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

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 USACE 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 USACE 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 1,300 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 in the initial stages; Barrier IIB will augment the capabilities of Barriers I and IIA potentially allowing for maintenance operations without the use of rotenone.

Until on-scene preparations begin on December 2, 2009 for the application of rotenone, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to conduct normal operations. Once preparations begin on December 2, 2009, until clean-up is complete which at the earliest will be December 10 but may last until December 14, no vessels except those being used for the rotenone application and clean-up will be permitted to enter or remain in the safety and security zone. When clean-up is complete, the Captain of the Port Sector Lake Michigan will cause notice that vessels engaged in normal operations may transit the safety and security zone, and will do so by all appropriate means to affect the widest publicity among the affected segments of the public.

Discussion of Rule

This rule suspends 33 CFR 165.923 until 5 p.m. on December 18, 2009. This rule places a safety and security zone on all waters of the Chicago Sanitary Ship and Canal from mile-marker 291 (Lockport Lock and Dam) to mile-marker 288.6.

The Coast Guard has deemed this safety and security zone necessary from November 30, 2009, until December 18, 2009 to the protect the waters, commercial vessels and recreational boaters who transit the area during the preparation, application and clean-up of the rotenone application.

Until 8 a.m. on December 2, 2009, vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), are permitted to transit through the safety

and security zone. Vessels may not moor or lay up in the safety and security zone unless preparing to, or engaging in, loading or unloading operations. Any vessel not actively preparing to, or currently engaged in, loading and unloading operations must ask for permission for the Captain of the Port to remain in the safety and security zone.

Beginning at 8 a.m. on December 2, 2009 preparations will begin for the application of rotenone at which time the Captain of the Port Sector Lake Michigan will prohibit all vessels, except those engaged in rotenone application operations or fish carcass removal, from transiting the safety and security zone. Vessels desiring to transit must request permission from the Captain of the Port Sector Lake Michigan or her on-scene representative.

The Captain of the Port Sector Lake Michigan will cause notice of the Coast Guard again permitting vessels to transit this safety and security zone 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. In addition, Captain of the Port Sector 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 and security zones by contacting the Captain of the Port Sector 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 thirteen (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 minimal. This determination is based the following: (1) Initial test results at the current operating parameters of two volts per inch indicate that the majority of commercial and recreational vessels that regularly transit the Chicago Sanitary

and Ship Canal will be permitted to enter the safety zone under certain conditions; and, (2) every effort will be made to reduce the closure time of the canal following the shutdown of Barrier IIA for maintenance and rotenone application.

Because these safety and security zones must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time. The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of permanent or temporary closures of the Chicago Sanitary and Ship Canal. Comments can be made online by going to <http://www.regulations.gov>, inserting USCG-2009-1052 in the "Keyword" box, and then clicking "Search."

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) requires agencies to consider whether regulatory actions 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. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

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 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 023-01 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 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 a security or safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. The Coast Guard's environmental responsibilities extend only to the creation of a safety and security zone and do not address the application of rotenone. Any questions regarding the rotenone operation should be addressed to Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes National Program Office, 77 W. Jackson Blvd., Chicago, IL 60604, at (312) 353–6316.

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. § 165.923 is suspended from December 10, 2009 until 5 p.m. on December 18, 2009.

■ 3. A new temporary § 165.T09–1052 is added from December 10, 2009 until 5 p.m. on December 18, 2009 as follows:

§ 165.T09–1052 Safety and Security Zone, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Ruby Street Bridge to Lockport Lock Safety and Security Zone.*

(1) The following area is a temporary safety and security zone: All waters of the Chicago Sanitary and Ship Canal

located between mile marker 291.0 (Lockport Lock and Dam) and mile marker 288.6 (approximately 500 feet south of the Ruby Street Bridge).

(2) *Enforcement Period.* The safety and security zone will be enforced from 5 p.m. on November 30, 2009, until 5 p.m. on December 18, 2009. Beginning December 1, 2009, the Coast Guard will use actual notice to enforce this safety and security zone until this rule is published in the **Federal Register**.

(3) Regulations.

(i) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan, or her representative.

(ii) The “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 Sector Lake Michigan to act on her behalf. The representative of the Captain of the Port Sector Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio, loudhailer, or by phone. The Captain of the Port Sector Lake Michigan or her representative may be contacted via VHF–FM radio Channel 16 or the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

(iii) Vessel operators desiring to enter or operate within the safety and security zone must comply with the provisions of paragraph (b)(4)(iv) of this section or contact the Captain of the Port Sector Lake Michigan or her representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety and security zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or her representative.

(iv) Until 8 a.m. on December 2, 2009, vessels are permitted to transit the safety and security zone.

(v) Starting at 8 a.m. on December 2, 2009, this safety and security zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or her representative. As soon as clean-up efforts from the rotenone application are complete, the Captain of the Port will cause notice of the safety and security zone being open to vessel transits, by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

Dated: November 27, 2009.

P.V. Neffenger,

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

[FR Doc. E9–29417 Filed 12–9–09; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–4 and CP2010–4; Order No. 326]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 22 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective December 10, 2009 and is applicable beginning October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

Regulatory History, 74 FR 54600 (October 22, 2009).

- I. Introduction
- II. Background
- III. Comments
- IV. Commission Analysis
- V. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 22 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On October 14, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 22 to the Competitive Product List.¹ The Postal Service asserts that the Priority Mail Contract 22 product is a competitive product “not of general applicability” within the meaning of 39

¹ Request of the United States Postal Service to Add Priority Mail Contract 22 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, October 14, 2009 (Request).