



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2014-0592]

RIN 1625-AA11

Regulated Navigation Area; Lake Michigan, Chicago Harbor Lock, Chicago, IL to Calumet Harbor, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area for waters of Lake Michigan within 5 nautical miles from shore from the Chicago Harbor Lock, Chicago, Illinois to Calumet Harbor, Chicago, Illinois. This regulated navigation area is intended to allow barges to transit an alternate route on a portion of Lake Michigan due to the temporary closure of the Thomas J. O'Brien Lock on RM 326.5 on the Calumet River. This proposed regulated navigation area is necessary to ensure vessel safety and facilitate commerce.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2014-0592 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) 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.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Heidi Bragalone, U.S. Coast Guard Marine Safety Unit Chicago; telephone 630-986-2131, e-mail Heidi.E.Bragalone@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area

A. 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.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2014-0592), 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 at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. 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>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2014-0592" in the "Keyword" box. Click "Search" 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 comments 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 the rule based on your comments.

2. 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>, type the docket number USCG-2014-0592 in the "SEARCH" box and click "Search." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit 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.

3. 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).

4. Public meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting 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.

B. Regulatory History and Information

On June 4, 2014, Coast Guard Marine Safety Unit Chicago, Willowbrook, Illinois hosted a meeting with industry stakeholders and the United States Army Corps of Engineers to discuss the upcoming closure of the Thomas J. O'Brien Lock between November 3, 2014, and March 6, 2015. The Thomas J. O'Brien Lock permits barge traffic to transit the Illinois River System from Calumet Harbor to Chicago Harbor, Illinois. To facilitate commerce during the projected closure of the

Thomas J. O'Brien Lock, it was determined during the meeting that barges could be transported on an alternate route on Lake Michigan through the Chicago Harbor Lock, Chicago, Illinois. Because federal regulations for inspected and uninspected barges do not address this temporary alternate route, it was also determined that requirements for safe operation of barges were necessary for the transit to Chicago Harbor Lock, Chicago, Illinois from Calumet Harbor, Chicago, Illinois. In order to establish safe operating requirements for the temporary alternate route, the District Commander is establishing a regulated navigation area.

For uninspected dry cargo river barges, Table 45.171 in 46 CFR 45.171 was used as a reference to establish safe operating parameters. The barge requirements found in the voyage listed between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana were used for an uninspected dry cargo river barge transiting the temporary alternate route between Calumet Harbor, Chicago, Illinois and Chicago Harbor Lock, Chicago, Illinois.

For inspected river barges, special-service-limited-domestic-voyages regulations in 46 CFR part 44, Great Lakes load lines regulations in 46 CFR part 45, and Section 14 of the United States Coast Guard Load Line Policy Notes were used as a reference. These regulations and Coast Guard policy

outlined the requirements for an inspected river barge transiting the temporary alternate route between Calumet Harbor, Chicago, Illinois and Chicago Harbor Lock, Chicago, Illinois. Inspected river barges typically carry petroleum or chemical cargoes.

C. Basis and Purpose

The legal basis for this proposed rule is the Coast Guard's authority to establish RNAs and limited access areas: 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Between November 3, 2014, and March 6, 2015, the United States Army Corps of Engineers anticipates closing the Thomas J. O'Brien Lock for two 45-day periods in order to perform maintenance on the lock. The Thomas J. O'Brien Lock closures present a significant challenge to the barge industry and an alternate route is necessary in order to sustain commerce. Further safe operating requirements for this temporary alternate route are necessary to ensure safety of transiting barge traffic.

D. Discussion of Proposed Rule

This proposed regulated navigation area is necessary to facilitate commerce and establish safe operating requirements

for this temporary alternate route. Thus, this proposed rule would establish an RNA on the waters of Lake Michigan, between Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago, Illinois, within 5 nautical miles from shore.

This proposed regulated navigation area would be effective and enforced from November 1, 2014, through March 31, 2015.

The enforcement dates and times for this regulated navigation area are subject to change. In the event of a change, the Ninth District Commander will provide notice to the public by issuing a Notice of Enforcement for publication in the Federal Register, and announcing a Broadcast Notice to Mariners.

The Ninth District Commander will notify the public that the regulated navigation area in this proposal is or will be enforced in accordance with 33 CFR 165.7(a). Such means of notification may include publication in the Federal Register, Broadcast Notice to Mariners, or Local Notice to Mariners.

Inspected and uninspected river barges transiting this regulated navigation area, would need to operate in accordance with the following regulations:

Uninspected dry cargo barges.

In accordance with 46 CFR 45.171, unmanned dry cargo river barges transiting between Chicago Harbor Lock, Chicago,

Illinois and Calumet Harbor, Chicago, Illinois must meet the requirements for voyages between Burns Harbor, Indiana and Calumet Harbor, Chicago, Illinois outlined in Table 45.171 of 46 CFR 45.171, as follows:

- Load line requirement: Conditionally exempted from load line assignment.
- Where to register/apply: Exempted barges must be registered with the USCG Marine Safety Unit Chicago, 555A Plainfield Road, Willowbrook, IL 60527; Fax (630) 986-2120.
- Eligible barges are dry cargo river barges, built and maintained in accordance with ABS River Rules, Length-to-depth ratio is less than 22, and all weathertight and watertight closures are in proper working condition. There is no age limitation.
- Barges freeboard must be at least 24 inches (610mm). On open hopper barges, the coaming height + freeboard must be at least 54 inches (1,372 mm).
- Tow limitations: Barges must be unmanned. Barges must transit within 5 nautical miles from shore. There is no limit on the number of barges in tow.
- Cargo limitations: Dry cargoes only. Liquid cargoes, even in drums or tank containers, are prohibited. No

hazardous materials. HazMats are defined in 46 CFR part 148 and 49 CFR chapter 1, subchapter C.

- Weather limitations: Voyages will be conducted in "Fair weather" only. If worse conditions arise during the transit, the voyage must be discontinued and tow must proceed to shelter.
- Pre-departure preparations: Required; as specified in 46 CFR 45.191.
- Tow requirements:
 - o Power: sufficient to handle tow.
 - o Communication system: Recommended; 46 CFR 45.195(a).
 - o Cutting gear: Recommended; 46 CFR 45.195(b).
 - o Operational plan: Recommended; 46 CFR 45.197.

Coast Guard inspected tank barges.

Unmanned inspected river barges operating between Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago, Illinois must meet the following requirements:

- Markings: Great Lakes diamond without seasonal marks.
- Stability: Applicable 46 CFR subchapter S requirements.
- Strength: ABS Rules for Rivers and Intracoastal Waterways.

Tank barges over 300 feet in length must have loading information per 46 CFR 31.10-32.

- Freeboard: Dry cargo and tank barges are to comply with the

freeboard requirements of 46 CFR Part 45. Dry cargo barges will not be assessed penalties for hatch coaming or hatch cover deficiencies.

- Load Line Certificate: Great Lakes certificate with the following notation: *"This certificate is valid only for unmanned fair weather voyages between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana."*
- Operating restrictions: Voyages will be conducted in "Fair weather" only. If worse conditions arise during the transit, the voyage must be discontinued and tow must proceed to shelter. Barges must transit within 5 nautical miles of shore.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed 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, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under

those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because 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. This proposed regulated navigation area is intended to facilitate commerce and will not restrict navigation because it will allow barges to transit an additional route without making any changes to the current barge requirements. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is unnecessary.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 will not have a significant economic impact on a substantial number of small entities.

This proposed regulated navigation area will not have a significant economic impact on a substantial number of small entities because it is intended to facilitate commerce and will not restrict navigation because it will allow barges to transit an additional route without making any changes to the current barge requirements. 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.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Lieutenant Heidi Bragalone, Waterways Management Branch, Coast Guard Marine Safety Unit Chicago, Willowbrook, IL at (630)986-2131. 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.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. 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 proposed rule under that Order and have determined that it does not have implications for federalism.

6. 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.

7. 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

This proposed 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.

10. Protection of Children

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 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.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant

effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of a regulated navigation area and is therefore categorically excluded under figure 2-1, paragraph 34(g) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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; 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.

Subpart F—Specific Regulated Navigation Areas and Limited Access Areas

2. Add § 165.T09-0592 under the undesignated center heading “Ninth Coast Guard District” to read as follows:

§ 165.T09-0592 Regulated Navigation Area, Lake Michigan; Chicago Harbor Lock, Chicago, IL to Calumet Harbor, Chicago, IL.

(a) Location. All waters of Lake Michigan, between Chicago Harbor Lock, Chicago, Illinois to Calumet Harbor, Chicago, Illinois, extending within 5 nautical miles from shore.

(b) Effective period and enforcement. The regulated navigation area described in paragraph (a) of this section will be effective from November 1, 2014, through March 31, 2015. This section is expected to be enforced from November 1, 2014, through March 31, 2015, but the enforcement dates and times for this regulated navigation area are subject to change. In the event of a change, the Ninth District Commander will provide notice to the public by issuing a Notice of Enforcement for publication in the Federal Register, and announcing a Broadcast Notice to Mariners.

(c) Regulations. (1) In accordance with 46 CFR 45.171, unmanned dry cargo river barges transiting between Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago,

Illinois must meet the requirements for voyages between Burns Harbor, Indiana and Calumet Harbor, Chicago, Illinois outlined in Table 45.171 of 46 CFR 45.171, as follows:

(i) Load line requirement: Conditionally exempted from load line assignment.

(ii) Where to register/apply: Exempted barges must be registered with the USCG Marine Safety Unit, 555A Plainfield Road, Willowbrook, IL 60527; Fax (630) 986-2120.

(iii) Eligible barges are dry cargo river barges, built and maintained in accordance with ABS River Rules, Length-to-depth ratio is less than 22, and all weathertight and watertight closures are in proper working condition. There is no age limitation.

(iv) Barges freeboard must be at least 24 inches (610mm). On open hopper barges, the coaming height + freeboard must be at least 54 inches (1,372 mm)

(v) Tow limitations: Barges must be unmanned. Barges must transit within 5 nautical miles from shore. There is no limit on the number of barges in tow.

(vi) Cargo limitations: Dry cargoes only. Liquid cargoes, even in drums or tank containers, are prohibited. No hazardous materials. Hazardous materials are defined in 46 CFR part 148 and 49 CFR chapter 1, subchapter C.

(vii) Weather limitations: Voyages will be conducted in

"Fair weather" only. If worse conditions arise during the transit, the voyage must be discontinued and tow must proceed to shelter.

(viii) Pre-departure preparations: Required; as specified in 46 CFR 45.191.

(ix) Tow requirements:

(A) Power: sufficient to handle tow.

(B) Communication system: Recommended; 46 CFR 45.195(a).

(C) Cutting gear: Recommended; 46 CFR 45.195(b).

(D) Operational plan: Recommended; 46 CFR 45.197.

(2) Unmanned inspected river barges operating between Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago, Illinois must meet the following requirements:

(i) Markings: Great Lakes diamond without seasonal marks.

(ii) Stability: Applicable 46 CFR subchapter S requirements.

(iii) Strength: ABS Rules for Rivers and Intracoastal Waterways. Tank barges over 300 feet in length must have loading information per 46 CFR 31.10-32.

(iv) Freeboard: Dry cargo and tank barges are to comply with the freeboard requirements of 46 CFR Part 45. Dry cargo barges will not be assessed penalties for hatch coaming or hatch cover deficiencies.

(v) Load Line Certificate: Great Lakes certificate with

the following notation: *"This certificate is valid only for unmanned fair weather voyages between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana."*

(vi) Operating restrictions: Voyages will be conducted in "Fair weather" only. If worse conditions arise during the transit, the voyage must be discontinued and tow must proceed to shelter. Barges must transit within 5 nautical miles from shore.

Dated: August 8, 2014.

F.M. MIDGETTE
Rear Admiral, U. S. Coast Guard
Commander, Ninth Coast Guard District

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