

## 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

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.

## 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295; 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary § 165.T11-210 to read as follows:

### § 165.T11-210 Safety Zone; San Clemente Island Northwest Harbor August and September Training; Northwest Harbor, San Clemente Island, CA.

(a) *Location.* The limits of the safety zone will include the navigable waters of the Northwest Harbor of San Clemente Island bounded by the following coordinates: 33°02'06" N, 118°35'36" W; 33°02'00" N, 118°34'36" W; thence along the coast of San Clemente Island to 33°02'06" N, 118°35'36" W.

(b) *Enforcement Period.* This section will be enforced from August 1, 2009 through September 30, 2009 during naval training exercises. If the training is concluded prior to the scheduled termination time, the COTP will cease

enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definitions apply to this section: (1) *Designated representative* means any Commissioned, Warrant, or Petty Officers of the Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on behalf of the COTP.

(2) *Non-authorized personnel and vessels*, means any civilian boats, fishermen, divers, and swimmers.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the COTP San Diego or his designated representative.

(2) Non-authorized personnel and vessels requesting permission to transit through the safety zone may request authorization to do so from the COTP San Diego or his designated representative. They may be contacted on VHF-FM Channel 16, or at telephone number (619) 278-7033.

(3) Naval units involved in the exercise are allowed in the confines of the established safety zone.

(4) All persons and vessels shall comply with the instructions of the Coast Guard COTP or his designated representative.

(5) Upon being hailed by the U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(6) The Coast Guard may be assisted by other federal, state, or local agencies and the U.S. Navy.

Dated: June 22, 2009.

**D.L. LeBlanc,**

*Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.*

[FR Doc. E9-15885 Filed 7-6-09; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG-2009-0399]

RIN 1625-AA00

### Safety Zone, Kinnickinnic River Sediment Removal Project, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on

the Kinnickinnic River in Milwaukee, WI. This temporary interim rule places navigational and operational restrictions on all vessels transiting the navigable waters located between the West Becher Street Bridge and the South Kinnickinnic Avenue Bridge located in Milwaukee, WI.

**DATES:** This temporary interim rule is effective from June 12, 2009 until December 31, 2009. Comments and related material must reach the Docket Management Facility on or before August 6, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0399 using any one of the following methods:

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

*Fax:* 202–493–2251.

*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.

*Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the “Public Participation and Request for Comments”.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary interim rule, call BM2 Adam Kraft, Waterways Management Division, Coast Guard Sector Lake Michigan, telephone 414–747–7154. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

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

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

##### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0399), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert “USCG–2009–0399” in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0399 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### **Privacy Act**

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

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one

would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Regulatory Information**

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because of the importance of removing harmful polychlorinated biphenyls from this area of water. Also, this project has been opened to the community for comment via numerous public meetings, local news, and comment cards that were given to the local marinas. No feedback was received. Likewise, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the safety risk to commercial and recreational boaters who could possibly transit this area. The following discussion and the Background and Purpose section below provides additional support of the Coast Guard’s determination that good causes exists for not publishing a NPRM and for making this rule effective less than 30 days after publication.

The Kinnickinnic Sediment Removal Project is a 22 million dollar dredging project that’s main purpose is to remove harmful polychlorinated biphenyls from the sediment in this area of water. This is an Environmental Protection Agency (EPA) sponsored project which has joined with the Army Corp of Engineers for coordination and completion. This project has been in the planning stages since 2002 and has incorporated many local stakeholders into their meetings, including: Southwind Marine, Milwaukee Marine, Canadian Pacific Railroad, Ryba Marine, United States Coast Guard and the Gillen Company to ensure all issues that could arise from a project of this magnitude are addressed. They also have involved the public through the use of the local news, public comment forums, informational handouts, and public open houses. They have received no negative feedback from any of this public outreach. The area that is affected by this project does not affect

any commercial traffic and rarely encounters any type of recreational traffic. The area of river where this project is occurring only affects one winter storage marina and the owner of that marina has been involved in all aspects of this planning.

#### **Background and Purpose**

U.S. Environmental Protection Agency Great Lakes National Program Office and state partner Wisconsin Department of Natural Resources are heading up the dredging of contaminated sediment from Milwaukee's Kinnickinnic River. The \$22 million project is being funded under the Great Lakes Legacy Act (GLLA). The Act provides federal money that along with local matching dollars are used to clean up polluted sediment (mud) along the U.S. shores of the Great Lakes. The Kinnickinnic River project calls for the removal of about 170,000 cubic yards of sediment contaminated with PCBs and PAHs (polychlorinated biphenyls and polyaromatic hydrocarbons).

#### **Discussion of Rule**

The proposed safety zone will encompass all waters of the Kinnickinnic River between the West Becher Street Bridge located at 43°00'37" N 087°54'51" W and the South Kinnickinnic Avenue Bridge located at 43°00'29" 087°54'30". (NAD 83). Vessels will be permitted to transit the zone with the permission of the Captain of the Port Lake Michigan or his on-scene representative. Periods during which transit of the zone will be permitted will be communicated to the public daily via Broadcast Notice to Mariners. These Broadcasts can be heard daily via VHF Channel 16.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

#### **Regulatory Analyses**

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

#### **Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the following: (1) Commercial vessel traffic is non-existent in this area and recreational traffic is very minimal; (2) the public is very well informed about this project via local news, public comment forums, and public open houses; (3) all local marinas have been involved in every aspect of the seven years of planning that have lead up to this project; and (4) the safety zone almost always will have daily four hour openings for traffic to pass through if needed.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small: The owners and operators of vessels intending to transit or anchor in a portion of the Kinnickinnic River, Milwaukee, WI between 7 a.m. on June 12, 2009 and 11:59 p.m. (local) on December 31, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) Commercial vessel traffic is non-existent in this area and recreational traffic is very minimal; (2) the public is very well informed about this project via local news, public comment forums, and public open houses; (3) all local marinas have been involved in every aspect of the seven years of planning that have lead up to this project; and (4) the safety zone almost always will have daily four hour openings for traffic to pass through if needed. The Coast Guard will give notice to the public, using all appropriate means to inform them when

the safety zone is enforced and when openings are authorized.

#### **Assistance for Small Entities**

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

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

#### **Collection of Information**

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

#### **Federalism**

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

#### **Unfunded Mandates Reform Act**

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

#### **Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

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

#### Protection of Children

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

#### Indian Tribal Governments

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.

#### 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 safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T09-0399 to read as follows:

#### § 165.T09-0399 Safety Zone, Kinnickinnic River Sediment Removal Project, Milwaukee, WI.

(a) *Location.* All waters of the Kinnickinnic River between the West Becher Street Bridge located at 43°00'37" N, 087°54'51" W and the South Kinnickinnic Avenue Bridge located at 43°00'29" N, 087°54'30" W (NAD 83).

(b) *Enforcement period.* This regulation is enforced from 7 a.m. local on June 12, 2009 until 11:59 p.m. on

December 31, 2009. The Captain of the Port, Sector Lake Michigan may terminate this zone at any time.

(c) *Regulations.* (1) 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 his on-scene representative.

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

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or his on-scene representative.

Dated: June 12, 2009.

**B.C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.*

[FR Doc. E9-15953 Filed 7-6-09; 8:45 am]

BILLING CODE 4910-15-P

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0469]

#### Security and Safety Zone Regulations, Large Passenger Vessel Protection, Portland, OR Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the security and safety zone in 33 CFR 165.1318 for large passenger vessels operating in the Portland, Oregon Captain of the Port Zone during the dates and times listed in **DATES**. This action is necessary to ensure the