

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[DOD-2006-OS-0133; RIN 0790-AI06]

**32 CFR Part 245****Plan for the Emergency Security Control of Air Traffic (ESCAT)****AGENCY:** Department of Defense.**ACTION:** Final rule; correction.

**SUMMARY:** This document amends the final rule published on the national plan for security control of air traffic during air defense emergencies to make administrative adjustments and includes correcting the effective date of the final rule, and removes references to State and regional disaster airlift (SARDA), rescinded by the Federal Aviation Administration on March 17, 2005.

**DATES:** The effective date for the final rule published at 71 FR 61889, October 20, 2006, is corrected to read: January 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald F. Pease, Jr., (703) 697-6937.

**SUPPLEMENTARY INFORMATION:** On October 20, 2006 the Department of Defense published a final rule on Plan for the Emergency Security Control of Air Traffic (ESCAT) which contained errors and outdated criteria.

In rule FR Doc. E6-17179 published on October 20, 2006, (71 FR 61889), make the following corrections:

1. On page 61889, in the first column, in the **DATES** section, revise the effective date to read January 18, 2007.

**§ 245.5 [Corrected]**

■ 2. On page 61890, in the third column, remove the term *State and regional disaster airlift (SARDA)* and its definition from § 245.5.

**§ 245.6 [Corrected]**

■ 3. On page 61891, in the first column, remove “SARDA—State and Regional Disaster Airlift” from the list of acronyms in § 245.6.

**§ 245.22 [Corrected]**

■ 4. On page 61894, under § 245.22, in the second column, remove paragraph (d) and redesignate paragraph (e) as paragraph (d).

Dated: November 2, 2006.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 06-9113 Filed 11-9-06; 8:45 am]

**BILLING CODE 5001-06-M**

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

[CGD09-06-122]

RIN 1625-AA00

**Safety Zone; St. Louis River/Duluth/Interlake Tar Remediation Site, Duluth, MN****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the St. Louis River in Duluth, Minnesota. The purpose of the safety zone is to protect the boating public from dangers associated with the cleanup operation in and around Stryker Bay. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his duly appointed representative.

**DATES:** This rule is effective 8 a.m. (CST) on November 30, 2006.

**ADDRESSES:** Comments and material received from the public are part of the docket [CGD09-06-122] and are available for inspection or copying at U.S. Coast Guard Marine Safety Unit Duluth, 600 South Lake Ave, Canal Park, Duluth, Minnesota 55802 between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:**

LCDR Scott Stoermer, U.S. Coast Guard Marine Safety Unit Duluth, at (218) 720-5286, ext. 111.

**SUPPLEMENTARY INFORMATION:****Background and Purpose**

On June 23, 2006, the Captain of the Port Duluth issued a Temporary Final Rule (71 FR 36012, CGD9-06-031, 33 CFR 165.T09-031) establishing a safety zone in Stryker Bay and Hallett Slips 6 & 7, which expires on November 30, 2006. Additionally, the Captain of the Port Duluth published a NPRM to make the safety zone permanent (71 FR 44250, CGD9-06-122, 33 CFR 165.927). The Coast Guard, through this action, intends to continue to ensure the safety of the public and boating traffic in the Stryker Bay area during the course of an environmental remediation project. This safety zone is intended to restrict vessel traffic from the portion of St. Louis River where construction and dredging are occurring. The size of the zone was determined by placing the boundaries approximately 50 feet beyond the outermost extent of dredging operations, encompassing all of Stryker Bay and

Hallett Slips 6 & 7. The Coast Guard intends to cancel this safety zone upon completion of the remediation which is currently anticipated to last for three years.

**Discussion of Rule**

The Coast Guard is establishing this safety zone to ensure the safety of boaters transiting this portion of the St. Louis River. The safety zone is identical to the current safety zone established by the temporary final rule discussed above.

The safety zone would encompass all waters of Stryker Bay and Hallett Slips 6 & 7 which are located north of a boundary line delineated by the following points: From the shoreline at 46° 43'10.00" N, 092°10'31.66" W, then south to 46°43'06.24" N, 092°10'31.66" W, then east to 46°43'06.24" N, 092°09'41.76" W, then north to the shoreline at 46°43'10.04" N, 092°09'41.76" W. These coordinates are based upon North American Datum 1983 [NAD 83].

The safety zone requires that all persons and vessels comply with the instructions of the Captain of the Port Duluth or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone would be prohibited unless authorized by the Captain of the Port Duluth or his designated on-scene representative. The Captain of the Port or his designated representative may be contacted at Coast Guard Marine Safety Unit Duluth at (218) 720-5286.

**Regulatory Evaluation**

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. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the absence of any commercial vessel traffic in this portion of the St. Louis River. There are currently no operational marine terminals west of Hallett Slip 7, which is part of the remediation.

**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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the St. Louis River in the above described zone during the effective period.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Hallett Slips 6 & 7 are industrial properties not generally used by the public, and Stryker Bay already has posted warnings against use of those waters. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Duluth or his designated on-scene representative. Before the effective period, we will issue maritime advisories and ensure they are widely available to users of the St. Louis River.

#### **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 could better evaluate its effects on them and participate in the rulemaking process. 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 MSU Duluth (see **ADDRESSES**).

#### **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 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 would 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 affect 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 concern 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 procedure; and related management system 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 Commandant Instruction M16475.1D, which guides 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 there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34) (g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### **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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. A new § 165.927 is added to read as follows:

**§ 165.927 Safety Zone; St. Louis River, Duluth/Interlake Tar Remediation Site, Duluth, MN.**

(a) Location: The following area is a safety zone: All waters of Stryker Bay and Hallett Slips 6 & 7 which are located north of a boundary line delineated by the following points: From the shoreline at 46°43'10.00" N, 092°10'31.66" W, then south to 46°43'06.24" N, 092°10'31.66" W, then east to 46°43'06.24" N, 092°09'41.76" W, then north to the shoreline at 46°43'10.04" N, 092°09'41.76" W. [Datum NAD 83].

(b) *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 Duluth, or his designated on-scene representative.

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

(3) The “designated 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. The Captain of the Port or his designated on-scene representative may be contacted by calling Coast Guard Marine Safety Unit Duluth at (218) 720–5286.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Duluth to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Duluth or his on-scene representative.

Dated: October 23, 2006.

**G.T. Croot,**

*Commander, U.S. Coast Guard, Captain of the Port Duluth.*

[FR Doc. E6–19105 Filed 11–9–06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

#### 33 CFR Part 401

**RIN 2135–AA23**

### Seaway Regulations and Rules: Inflation Adjustment of Civil Monetary Penalty

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of the statutory civil penalty for violation of the Seaway Regulations and Rules under the authority of the Ports and Waterways Safety Act of 1972, as amended (PWSA).

**DATES:** This rule will be effective December 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 NOTE, as amended by the Debt Collection Improvement Act of 1996 (Act), Public Law 104–134, April 26, 1996, requires the inflation adjustment of civil monetary penalties (CMP) to ensure that they continue to maintain their deterrent value. The Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every four years thereafter, the head of each agency shall, by regulation published in the **Federal Register**, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for all urban consumers (CPI), published annually by the Department of Labor, for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Nevertheless, the first adjustment to a CMP may not exceed 10 percent of that penalty amount. Any increased penalties shall apply to violations that occur after the date on which the

increase takes effect. 33 U.S.C. 1232(a) imposes a maximum \$25,000 civil penalty for a violation of a regulation issued under the authority of the PWSA, which includes the Seaway Regulations and Rules in 33 CFR part 401. The penalty was set in 1978. Under the Act, the penalty amount was adjusted in 1996 to \$27,500 and in 2002 to \$31,625. The CPI for June 2002 was 538.9. The CPI for June 2005 is 582.6. The inflation factor, therefore, is 582.6/538.9 or 1.081. The maximum penalty amount after the increase and statutory rounding would be \$36,625 ( $1.081 \times 31,625$ ). Accordingly, paragraph (a) of section 401.102 is being amended to change the amount of the penalty from \$31,625 to \$36,625.

#### Regulatory Evaluation

This final rule is exempt from Office of Management and Budget review under Executive Order 12866 because it is limited to the adoption of statutory language, without interpretation. As stated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Act for a specific, applicable CMP under the authority of the Corporation. The great majority of individuals, organizations, and entities addressed through the Seaway Regulations and Rules do not commit violations and, as a result, we believe any aggregate economic impact of this revision will be minimal, affecting only those who violate the regulations. As such, the final rule and its inflation adjustment should have no effect on Federal and State expenditures. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

#### Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The Saint Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

#### Environmental Impact

This final rule does not require an environmental impact statement under the National Environmental Policy Act