(g) *Information to be reported to the Inland River Vessel Movement Center by fleeting area managers.* Fleeting area managers responsible for one or more CDC barges in the RNA must report the information required by this section, as set out in table 165.830(g) to this paragraph.

TABLE 165.830(g).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY FLEETING AREA MANAGERS

	24 hr contact number	Barge(s) name and official number	Type, name and amount of CDC onboard	Location of CDC barge (fleeting area or facility)
(1) Once daily, all CDC barges in a fleeting area	X	X	X	X
(2) Upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, by a fleet tow boat		X	X	X
(3) Any significant deviation from previously reported information (all that apply)	X	X	X	X
(4) When directed by the IRVMC	X	X	X	X

(h) *Alternative reporting.* The Eighth Coast Guard District Commander may consider and approve alternative methods to be used by a reporting party to meet any reporting requirements if:

(1) the request is submitted in writing to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130; and

(2) the alternative provides an equivalent level of the reporting that which would be achieved by the Coast Guard with the required check-in points.

(i) Deviation from this section is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or the IRVMC.

Dated: July 22, 2003.

R.F. Duncan,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–19364 Filed 7–25–03; 3:54 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–241]

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System Within the Ninth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes an interim rule to establish a regulated navigation area (RNA) for all portions of the Illinois Waterway System located in the Ninth Coast Guard District. This RNA will apply to towing vessel operators and fleeting area managers who are responsible for the movement of barges carrying certain dangerous cargoes on inland rivers and requires them to report their position and other information to the Inland River Vessel Movement Center. This action is necessary to ensure public safety, prevent sabotage or terrorist acts, and facilitate the efforts of emergency services and law enforcement officers responding to terrorist attacks.

DATES: Comments and related material must reach the Coast Guard on or before September 15, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before September 15, 2003.

ADDRESSES: You may mail comments and related material to Commander (m), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, OH 44199. Commander, Ninth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–241] and are available for inspection or copying at Commander (m), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, OH 44199 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Commander Michael Gardiner or Lieutenant Matthew Colmer, Ninth Coast Guard District Marine Safety Division, at (216) 902–6045.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 2, 2003, the Coast Guard published a similar temporary final rule and request for comments entitled ''Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System Within the Ninth Coast Guard District'' in the **Federal Register** (68 FR 23399).

The Ninth Coast Guard District did not receive any comments with regard to this rulemaking. However, since this rulemaking compliments a parallel rule published by the Eight Coast Guard District on May 2, 2003 (68 FR 23393), comments received by the Eighth District are addressed in this rulemaking as if received in response to our temporary final rule.

As of July 9, 2003, we have received six written comments on the temporary rule. The American Waterways Operators (AWO) requested a meeting with the Eighth Coast Guard District regarding the temporary rule. A meeting was held on May 8, 2003, at the Hale Boggs Federal Building in New Orleans, LA.

Given that the temporary rule will expire October 31, 2003, the Coast Guard is allowing 45 days to comment on this proposed interim rule. The Coast Guard considers 45 days to be sufficient because we have already received comments from two associations—AWO and Gulf Coast Marine Association (GCMA), and two of the companies impacted by the temporary rule. As indicated in our ''Discussion of Comments and Changes'' section below, we have considered these comments in drafting our proposed interim rule and, where appropriate, we have made the proposed rule less burdensome than the temporary rule currently in effect. Also, this proposed rule would be issued as an interim rule with an additional comment period before we would impose any final rule.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–03–241], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Ninth Coast Guard District (m) 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**.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' abilities to utilize multiple means in different geographic areas thereby increasing their opportunities to maximize destruction.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002). The President found that the security of the U.S. is endangered by the September 11, 2001 attacks and terrorist attacks continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD also issued Advisory 03–03 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert due to the Al Qaeda organization and other similar organizations who have declared their intentions to conduct armed attacks on U.S. interests worldwide.

Therefore, on April 16, 2003, the Coast Guard established a temporary RNA within the Illinois Waterway System within the Ninth Coast Guard District in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts. The temporary RNA remains in effect and applies to barges loaded with certain dangerous cargoes (CDCs) operating on the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. The RNA affects vessels transporting barges loaded with CDCs that if used as weapons of terrorism could result in substantial loss of life, property, environmental damage, and grave economic consequences. The temporary rule requires operators of barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the Inland River Vessel Movement Center (IRVMC) for the protection against sabotage and terrorist acts. The temporary final rule was published May 2, 2003, in the **Federal Register** (68 FR 23399) and expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on inland rivers and therefore we are proposing to issue an interim rule while we continue to consider alternatives to increase maritime domain awareness on the inland rivers in the Ninth Coast Guard District. The proposed rule would allow the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

Discussion of Comments and Changes

The Ninth Coast Guard District did not receive any comments with regard to this rulemaking. However, since this rulemaking compliments a parallel rule published by the Eighth Coast Guard District on May 2, 2003 (68 FR 23393), those comments are addressed in this rulemaking as if received in response to our temporary final rule, request for comments.

As of July 9, 2003, the Eighth Coast Guard District received six written comments on the temporary rule. The American Waterways Operators requested a meeting with the Coast Guard regarding the rule. The meeting was held on May 8, 2003, at the Hale Boggs Federal Building in New Orleans, LA. All comments received focused generally on: (1) Changes and clarification of the definitions; (2) use of marine chemist certification; (3) location and amount of reporting points; (4) CDC barges in fleeting areas (5) need, use and validity of the information being collected; (6) availability of the information being collected from other sources; (7) use of technology such as electronic reporting; (8) cost and burden of the reporting requirements; (9) justification of the regulation; and (10) consistency with existing regulations. Each of these groups of comments is discussed in more detail in the following paragraphs.

Definitions. Several comments suggested some of the definitions lead to confusion and should be clarified or removed.

Three comments were received regarding the definition of ''certain dangerous cargoes (CDCs)'' and how they were determined. CDCs have specific characteristics that make them a higher risk compared to the other cargoes listed in 49 CFR parts 171 and 172. The list of cargoes includes cargoes that have not been traditionally carried on the river but which are not prohibited from carriage. One comment addressed the inconsistency between the CDC definition of ammonium nitrate as stated in the temporary rule and the CDC definition as stated in 33 CFR 160.204, published February 28, 2003 in *Notification of Arrival in U.S. Ports* (68 FR 9537, 9544). The CDC list published in 33 CFR 160.204 applies to packaged cargoes listed in 49 CFR chapter I, subchapter C. As such, ammonium nitrate in bulk is currently not considered a CDC. The Coast Guard proposes to use the same definition as set out in 33 CFR 160.204 with the addition of propylene oxide.

Three comments received stated that the definitions of ''empty'', ''gas free''

and ''loaded'' were confusing and misleading. We agree. The proposed rule will apply to barges carrying CDCs or CDC residue and the terms ''empty'', ''gas free'' and ''loaded'' will no longer be used. We received one comment suggesting that the definition for ''final destination'' could be removed if the regulation section was amended to simply require a report upon dropping off a CDC barge at a fleeting area or facility. We agree and propose to remove the term ''final destination'' and have changed the regulation accordingly. We received two comments stating that the definition of ''operator'' is vague. We agree. We propose to change the word ''operator'' to ''towing vessel operator''. Towing vessel operator would be defined as ''Captain or pilot who is on watch.'' Also, we propose that a ''company representative'' or ''dispatcher'' may report the specific information required by the purpose of the rule to the IRVMC on behalf of the towing vessel operator or fleeting area manager.

Marine Chemist Certification. We received one comment regarding the use of a marine chemist to certify barges are ''gas free.'' As we stated in the preceding paragraph, the terms ''empty'', ''gas free'', and ''loaded'' are not used in this proposed rule. We have made the proposed rule applicable only to barges carrying CDCs or CDC residue. A barge is not carrying CDCs or CDC residue when it has either never carried CDCs or when it has been certified as ''gas free'' by a marine chemist.

Location and Number of Reporting Points. We received several comments related to the location and number of reporting points. One comment asked us why the RNA did not continue to, or beyond, New Orleans, Louisiana. The proposed RNA is the same as the regulated area in the temporary rule. The regulated area in the temporary rule does not extend below mile 235.0 on the Lower Mississippi River (Baton Rouge, Louisiana) because the NOA regulations published February 28, 2003, in the **Federal Register**, apply to all domestic barges carrying CDCs operating below mile 235.0 on the Lower Mississippi River. Making this proposed rule continue to, or beyond, New Orleans, Louisiana would result in duplicative reporting to the National Vessel Movement Center (NVMC) and the Inland River Vessel Movement Center (IRVMC). Therefore the location for the proposed RNA remains unchanged from the regulated area in the temporary rule currently in effect.

Three comments were received regarding several reporting points being located at a turn or in other hazardous areas of the waterway. The comments recommended changing the location of the reporting points. We agree. We have proposed to have a segment of the waterway serve as a reporting point (that is, the towing vessel operator would be required to report to the IRVMC when transiting upbound between mile 235.0 and mile 240.0 on the Lower Mississippi River). The proposed reporting points, based on recommendations from the waterway users, are reflected in table 165.821(e).

One comment recommended the reporting points should be the same for upbound and downbound. We agree, with the exception of seven reporting points, and the appropriate changes are reflected in the reporting points proposed in table 165.821(e).

Two comments recommended using the Captain of the Port (COTP) boundaries as reporting points because the COTP would be able to determine when a CDC barge enters and departs the zone, allowing for a reduction in the number of reporting points. We disagree. The IRVMC requires reporting within a COTP zone to monitor CDC barge movement through densely populated areas and other areas of concern. This information is disseminated to the appropriate COTP in which the CDC barge is located.

Fleeting Areas. We received two comments that the responsibility of reporting movements of CDC barges in fleeting areas was unclear. We agree and propose to change the regulatory text to specifically address CDC barges in fleeting areas. The Coast Guard proposes that fleeting managers or operators would not be required to report to the IRVMC when moving CDC barges within a fleet using a fleet towing vessel. However, they would be required to report to the IRVMC when a fleet towing vessel moves one or more CDC barges from one fleeting area to another fleeting area or to a facility. The Coast Guard also proposes to add the requirement that fleeting managers report all CDC barges in the fleeting area once a day to the IRVMC. This requirement has been determined to be necessary to ensure accountability for CDC barges located within fleeting areas in the RNA. A company representative or dispatcher would be allowed to report to the IRVMC on behalf of the fleeting area manager.

Need, Use and Validity of the Information Being Collected. We received three comments regarding the vagueness of the Coast Guard's need for the information being collected and how the Coast Guard intends to use this information. We also received one comment questioning how the Coast Guard intends to validate the information received.

The information to be collected in this proposed rule will be used for the same purposes as explained in the Collection of Information section of the temporary final rule—to enhance maritime domain awareness by tracking the movement of certain dangerous cargoes throughout the inland river system, and enable the Coast Guard to increase port safety and security and promote the uninterrupted flow of commerce within the Eighth Coast Guard District. The information will also be used to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

The Coast Guard has used the information collected pursuant to the temporary final rule to maintain continuous maritime domain awareness on the inland rivers so that we may respond, as appropriate, to an actual or threatened terrorist action. We intend to validate the information received through random escorts of towing vessels with CDC barges as they transit the RNA. The Coast Guard will also address the validity of information as it explores the availability of information available from other sources that would tend to validate information reported to the Coast Guard.

Since the temporary RNA has been in effect the Coast Guard has re-evaluated the need for the information being reported to the IRVMC at the following times: (1) 4 hours prior to loading a barge with CDCs, (2) 4 hours prior to dropping off a CDC barge at a fleeting area, and (3) 4 hours prior to picking up one or more CDC barges from a fleeting area. The Coast Guard has determined that there is no longer a need for reporting to the IRVMC 4 hours prior to loading a barge with CDCs. However, the Coast Guard needs to know where a CDC barge is within the RNA at all times and proposes to change the conditions under which a report must be made to the IRVMC to: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges; (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) upon moving one or more CDC barges from one fleeting area to another fleeting area; (6) once daily, report all CDC barges within a fleeting area; (7) at designated reporting points in table 165.821(e); (8) when estimated time of arrival (ETA) to a reporting point varies

by 6 hours from the previously reported ETA; (9) any significant deviation from previously reported information; (10) upon departing the RNA with one or more CDC barges; and (11) when directed by the IRVMC.

Availability of the Information From Other Sources. We received four comments on the availability of the information being collected from other sources. One comment mentioned that if we needed to know where the CDC barge was we would be able to request the data at any ''particular moment in time'' from the vessel operators or the Army Corps of Engineers. We agree that the Army Corps of Engineers collects adequate information from towing vessel operators and we are working with the Army Corps of Engineers to access that information. Once we are authorized to receive the information and the appropriate electronic systems are in place and tested, then we will re-evaluate the reporting points that coincide with the lock and dams (L&D). Until such time we are proposing to continue requiring information at reporting points that coincide with Army Corps of Engineer's L&Ds.

There was also discussion regarding the possibility of companies submitting real-time barge movement information to the Coast Guard via computer tracking programs in lieu of reporting to the Coast Guard at individual reporting points. A number of technology issues must be addressed in this area before this could be accomplished. Therefore, the Coast Guard proposes to maintain the manual collection of information from the reporting party in the interim rule while we continue to work with other government agencies and industry partners to research and develop alternatives to collecting the information necessary for the Coast Guard to maintain continual maritime domain awareness at any threat level.

Use of Technology. We received three comments regarding the use of technology to collect information by requiring electronic delivery of the information by automatic tracking devices and the web through real-time tracking programs. In response to these comments the Coast Guard is exploring existing systems used by affected companies for the possibility of integration of these systems. Before publishing the temporary final rule that established the existing RNA, the Coast Guard established the Inland River Vessel Movement Center (IRVMC), creating one location to which reports are to be made vice requiring reports to be made to each Captain of the Port (COTP) in which the CDC barge was operating. This proposed rule keeps the IRVMC in place, alleviating the burden on the towing vessel operator, responsible for a CDC barge, of having to determine which COTP zone they are operating in and maintaining a contact list for each COTP. The IRVMC accepts telephone (toll free), facsimile (toll free), and e-mail transmissions as means of reporting the information. Persons subject to this requirement may utilize the means that most efficiently meet their needs, provided that the information and timeliness requirements are met. The Coast Guard also has a reporting form and e-mail link available on the Internet at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

The Coast Guard proposes to continue receiving reports as required by the temporary rule. However, the Coast Guard proposes to consider and approve alternative methods, to be used by a reporting party, to meet any reporting requirements if: (1) The reporting party submits a written request for the alternative to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, OH 44199; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

Cost and Burden of the Reporting Requirements. We received several comments regarding the cost and burden of the reporting requirements. One comment mentioned that the preparation of reports for the Coast Guard by smaller or midsize companies that do not have 24-hour dispatchers adds to the daily workload of the mariner. We have added to the proposed regulatory text that alternative reporting may be requested from the Commander, Ninth Coast Guard District.

Two comments suggested that the Coast Guard could obtain this information from the Army Corps of Engineers rather than have separate reporting points for the Coast Guard thereby reducing the reporting burden. As stated earlier in this rule, we agree that the Army Corps of Engineers collects adequate information from the towing vessel operator and we are working with the Army Corps of Engineers to access the information. However in the interim, we are proposing to continue to use locks as reporting points.

Another suggestion was made to reduce the reporting requirements to a single report every 24 hours during periods of lower Maritime Security (MARSEC) levels, and, if the MARSEC level rose, the reporting requirements would be increased. However, this would not satisfy the Coast Guard's need to maintain constant maritime domain awareness for defined areas along the river systems, nor will it provide us timely information if the MARSEC level is increased due to a threat.

Justification of the Regulation. We received two comments concerning the justification for the regulation. One questioned why we implemented the RNA when we did; one questioned the justification for the timing of the RNA because we lowered the Maritime Security Condition (MARSEC) level the day the temporary RNA was effective; and another one questioned why the normal regulatory process of a notice of proposed rulemaking was not used. The effective date of the RNA and the change in the MARSEC level were coincidental. As a component of the Department of Homeland Security, the Coast Guard has a responsibility to ensure the safety and security of our ports and waterways. The temporary RNA and the proposed RNA will allow the Coast Guard to maintain constant maritime domain awareness on the inland rivers.

Response to Comments Summary

In response to these comments the Coast Guard is (1) removing the requirement to report 4 hours prior to loading a CDC barge in the RNA; (2) removing the requirement of reporting 4 hours prior to dropping off a CDC barge at a fleeting area; (3) establishing reporting requirements specifically for fleeting area managers; (4) considering and approving requests for alternative methods of meeting reporting requirements; (5) amending or removing some reporting points that were in unsafe areas; (6) exploring a reduction in checkpoints on pooled rivers by using Army Corps of Engineers data from L&Ds; (7) researching existing systems employed by affected companies with the possibility of the integration of these systems; and (8) researching technology for automatic tracking of CDC barges.

Discussion of Proposed Rule

The Coast Guard proposes to establish a regulated navigation area for the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. This proposed rule applies to: (1) towing vessel operators responsible for one or more CDC barges within the regulated area, and (2) fleeting area managers responsible for CDC barges in a fleeting area. The terms barge, certain dangerous cargoes (CDCs), downbound, CDC barge, Ninth Coast

Guard District, towing vessel operator, and upbound are defined in the regulatory section of this proposed rule.

Towing vessel operators responsible for one or more CDC barges would be required to report specific information, to the IRVMC, under the following conditions: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges; (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) at designated reporting points in table 165.821(e); (6) when estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (7) any significant deviation from previously reported information; (8) upon departing the RNA with one or more CDC barges; and (9) when directed by the IRVMC.

Fleeting area managers would be required to report specific information to the IRVMC under the following conditions: (1) Once daily, report all CDC barges within the fleeting area; (2) upon moving a CDC barge from one fleeting area to another or to a facility by fleeting towing vessels; (3) any significant deviation from previously reported information; and (4) when directed by the IRVMC.

A company representative or dispatcher may report the required information to the IRVMC on behalf of the towing vessel operator or fleeting area manager.

Each report made to the IRVMC, by a towing vessel operator or fleeting area manager, must contain all the information items specified in tables 165.921(f) and 165.921(g), respectively.

Reports must be made to the IRVMC, either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil*. A reporting form and e-mail link is available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm*.

The Coast Guard proposes to consider and approve alternative reporting methods to meet any reporting requirements if: (1) The request for the alternative is submitted in writing to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio 44199; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or designated representatives.

Regulatory Evaluation

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. 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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We present this Regulatory Evaluation for the purposes of information.

Evaluation. The regulatory baseline for this rule is the temporary rule. The cost for complying with the rule will differ depending on the means used to make a report to the IRVMC and the type of report, either an initial report or an update. The cost of the rule presented below is based on the average number of reports received by the IRVMC in April 2003 and May 2003.

ANNUAL COST AND BENEFIT OF THE PROPOSED RULE

[2003 Dollars]

Item	Cost per initial call	Cost per update call	Total
Personnel	$9462	$17,871	$27,333
Operating Expenses	$28,386	$53,613	$81,999
Total	$37,848	$71,484	$109,332

This cost estimate assumes: (1) The average merchant mariner's hourly rate is $30, (2) the average initial call is 6 minutes, (3) the average update call is 2 minutes, (4) the average cost per cell phone call is $1.50 per minute, and (5) 15 percent of all responses are initial reports to the IRVMC. Therefore, based on 177 respondents, the average cost is $618 per CDC barge per year. The reporting requirements proposed are necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge transits. The minimal hardships that may be experienced by persons or vessels, as a result of this rule, are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would 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: towing vessel operators and fleeting area managers responsible for CDCs barges on Illinois Waterway System within the Ninth Coast Guard District. This RNA will not have a significant economic impact on a substantial number of small entities because this rule does not require any alteration of barge operations or transits. The operational communications required by this RNA do not require towing vessel operators or fleeting area managers to obtain new equipment, and can be made toll free to the IRVMC.

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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 CDR Michael Gardiner, Project Manager for Commander, Ninth Coast Guard District, 1240 E. 9th Street, Cleveland, Ohio 44199, telephone (216) 902–6049.

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule revises an existing OMB-approved collection of information (1625–0105). The new collection of information estimate is based on data gathered as a result of the information collected under the temporary rule and is based on actual reports received by the IRVMC, as well as actual observation and tracking, for April 2003 and May 2003.

Title: Regulated Navigation Areas; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

OMB Control Number: 1625–0105.

Summary of the Collection of Information: The Coast Guard requires position and intended movement reporting, and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts. This rule will amend 33 CFR part 165 to require:

Towing vessel operators and fleeting area managers responsible for CDC barges must report the following information via toll free telephone, toll free fax, or email:

a. Name of barge and towboat;
b. Name of fleeting area and facility;
c. Estimated time of arrival (ETA) at fleeting area and facility;
d. Planned route, including estimated time of departure (ETD) from fleeting area and facility;
e. Upon entry into the covered geographical area;
f. 4 hours prior to originating a voyage with a CDC within the RNA
g. Upon picking up an additional CDC barge from a fleeting area or facility
h. Upon dropping off a CDC barge at a fleeting area or facility,
i. Upon moving a CDC barge from one fleeting area to another fleeting area or facility;
j. Once daily, all CDC barges within a fleeting area
k. ETA at approximately 105 designated reporting points within the covered geographical area;
l. At any time ETA to a reporting point varies by 6 hours from the previously reported ETA;
m. any significant deviation from previously reported information;
n. Upon departing the covered geographical area; and
o. When directed by the Coast Guard.

A company representative or dispatcher may report to the IRVMC on behalf of a towing vessel operator or fleeting area manager.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard proposes to issue regulations requiring position and intended movement reporting and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts.

Proposed Use of Information: The information is required to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations. The Coast Guard has used the information to maintain continuous maritime domain awareness on the inland rivers so that we may respond as appropriate to an actual or threatened terrorist action and enhance maritime security by boarding and/or escorting CDC barges in the vicinity of high-density population areas.

Description of the Respondents: The respondents are owners, agents, masters, towing vessel operators, or persons in charge of barges loaded with CDCs or having CDC residue operating on the inland rivers located within the Eighth and Ninth Coast Guard Districts.

Number of Respondents: The existing OMB-approved collection number of respondents is 3,505. This proposed rule will decrease the number of respondents by 3,328 to a total of 177.

Frequency of Response: Towing vessel operators moving barges carrying CDCs or CDC residue will submit reports as necessary. The existing OMB-approved collection annual number of responses is 7,711. This proposed rule will increase the number of responses by 13,313 to a total of 21,024.

Burden of Response: The existing OMB-approved collection burden of response is 15 minutes (0.25 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This proposed rule will decrease the burden of response by 9 minutes (0.15 hours) to a total of 6 minutes (0.10 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 1,928 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This proposed rule will decrease the total annual burden by 1017 hours to a total of 911 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review and approval of the revised collection of information. The existing OMB-approved collection (1625–1505) expires on October 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is, whether it can help us perform our functions better, whether it is readily available elsewhere, how accurate our estimate of the burden of collection is, how valid our methods for determining burden are, how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If OMB does not approve this revised collection of information, we will publish a notice in the **Federal Register** of OMB's decision.

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.

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

Taking of Private Property

This proposed rule would 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 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.

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.

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.

Energy Effects

We have analyzed this proposed 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.

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 concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available where indicated under **ADDRESSES.** Comments on this section will be considered before we make a final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposed 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. 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, 166 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.921 to read as follows:

§ 165.921 Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Illinois Waterway System, Ninth Coast Guard District.

(a) *Regulated Navigation Area.* The following waters are a Regulated Navigation Area (RNA): the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7 and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River.

(b) *Applicability.* This section applies to towing vessel operators and fleeting area managers responsible for CDC barges in the RNA. This section does not apply to:

(1) Towing vessel operators responsible for barges not carrying CDCs barges, or

(2) Towing vessel operators moving one or more CDC barges within a fleeting area.

(c) *Definitions.* As used in this section—*Barge* means a non-self propelled vessel engaged in commerce, as set out in 33 CFR 160.204.

Certain Dangerous Cargo or *(CDC)* includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 ''poisonous gas'', as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'' as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per barge.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 ''poisonous material'' as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'', as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per barge when not in a bulk packaging.

(6) Class 7, ''highway route controlled quantity'' radioactive material or ''fissile material, controlled shipment'', as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and Bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids—

(i) Acetone cyanohydrin,

(ii) Allyl alcohol,

(iii) Chlorosulfonic acid,

(iv) Crotonaldehyde,

(v) Ethylene chlorohydrin,

(vi) Ethylene dibromide,

(vii) Methacrylonitrile,

(viii) Oleum (fuming sulfuric acid), and

(ix) Propylene Oxide.

CDC barge means a barge containing CDCs or CDC residue.

Downbound means the tow is traveling with the current.

Inland River Vessel Movement Center or *(IRVMC)* means the Coast Guard office that is responsible for collecting the information required by this section.

Ninth Coast Guard District means the Coast Guard District as set out in 33 CFR part 3.45–1.

Towing vessel operator means the Captain or pilot who is on watch.

Upbound means the tow is traveling against the current.

(d) *Regulations.* The following must report to the Inland River Vessel Movement Center (IRVMC):

(1) The towing vessel operator responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.921(f), in paragraph (f) of this section, to the Inland River Vessel Movement Center (IRVMC):

(i) Upon point of entry into the RNA with one or more CDC barges;

(ii) Four hours before originating a voyage within the RNA with one or more CDC barges;

(iii) Upon dropping off one or more CDC barges at a fleeting area or facility;

(iv) Upon picking up one or more additional CDC barges from a fleeting area or facility;

(v) At designated reporting points, set forth in table 165.921(e), in paragraph (e) of this section;

(vi) When the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA;

(vii) Any significant deviation from previously reported information;

(viii) Upon departing the RNA with one or more CDC barges; and

(ix) When directed by the IRVMC.

(2) The fleeting area manager responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.921(g), in paragraph (g) of this section, to the Inland River Vessel Movement Center (IRVMC):

(i) Once daily, report all CDC barges within the fleeting area;

(ii) Upon moving one or more CDC barges from one fleeting area to another fleeting area or facility by a fleet tow boat;

(iii) Any significant deviation from previously reported information; and

(iv) When directed by the IRVMC.

(3) Reports required by this section may be made by a company representative or dispatcher on behalf of the towing vessel operator or fleeting area manager.

(4) Reports required by this section must be made to the IRVMC either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil.* A reporting form and e-mail link are available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

(5) The general regulations contained in 33 CFR 165.13 apply to this section.

(e) *Ninth Coast Guard District Illinois Waterway System RNA Reporting points.* Towing vessel operators responsible for one or more CDC barges in the RNA must make reports to the Inland River Vessel Movement Center at each point listed in table 165.921(e) of this paragraph.

TABLE 165.921(e).—NINTH COAST GUARD DISTRICT ILLINOIS WATERWAY SYSTEM REPORTING POINTS

(1) Illinois River (ILR) Upbound, at Mile Markers (M) and when Departing Lock & Dam (L&D):
- (i) M 187.2 (Southern Boundary MSO Chicago AOR)
- (ii) M 271.5 Dresden L&D
- (iii) M 291 Lockport L&D
- (iv) M 303.5 Junction of Chicago Sanitary Ship Canal and
- (v) Calumet-Sag Channel
- (vi) M 326.4 Thomas S. O'Brien L&D, Calumet River
- (vii) M 333.5 Confluence of Calumet River and Lake Michigan
- (viii) M 326.7 Chicago L&D, Chicago River

(2) Illinois River (ILR) Downbound Reporting Points, at Mile Markers (M) and when Departing Lock & Dam (L&D):
- (i) M 326.7 Chicago L&D, Chicago River
- (ii) M 333.5 Confluence of Calumet River and Lake Michigan
- (iii) M 326.4 Thomas S. O'Brien L&D, Calumet River
- (iv) M 303.5 Junction of Chicago Sanitary Ship Canal and
- (v) Calumet-Sag Channel
- (vi) M 291 Lockport L&D
- (vii) M 271.5 Dresden L&D
- (viii) M 187.2 (Southern Boundary MSO Chicago AOR)

(f) *Information to be reported by towing vessel operators to the Inland River Vessel Movement Center.* Towing vessel operators responsible for one or more CDC barges in the RNA must report all the information required by this section, as set out in table 165.921(f) of this paragraph.

TABLE 165.921(f).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY TOWING VESSEL OPERATORS

	24 hr contact No.	Name of vessel moving the barge(s)	Barge(s) name and official number	Type, name and amount of CDC onboard	Estimated time of departure from the fleeting area or facility	Planned route, name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival	Reporting point	Estimated time of arrival (ETA) to next reporting point (If applicable)
(1) Upon point of entry into the RNA with a CDC barge.	X	X	X	X	.....	X	X	X

TABLE 165.921(f).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY TOWING VESSEL OPERATORS—Continued

	24 hr contact No.	Name of vessel moving the barge(s)	Barge(s) name and official number	Type, name and amount of CDC onboard	Estimated time of departure from the fleeting area or facility	Planned route, name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival	Reporting point	Estimated time of arrival (ETA) to next reporting point (If applicable)
(2) Four hours before originating a voyage within the RNA with one or more CDC barges.	X	X	X	X	X	X	.....	X
(3) Upon dropping off one or more CDC barges at a fleeting area or facility.	.....	X	X	.....	.....	.....	.....	.....
(4) Upon picking up one or more additional CDC barges from a fleeting area or facility.	.....	X	X	X	.....	.....	.....	.....
(5) At designated reporting points in table 165.921(e).	.....	X	X	If changed	.....	If changed	X	X
(6) When ETA to a reporting point varies by 6 hours from previously reported ETA.	.....	X	If changed	If changed	.....	.....	.....	X
(7) Any significant deviation from previously reported information (all that apply).	X	X	X	X	X	X	X	X
(8) Upon departing the RNA with a CDC barge(s).	.....	X	X	.....	.....	.....	X	.....
(9) When directed by the IRVMC	X	X	X	X	X	X	X	X

(g) *Information to be reported to the Inland River Vessel Movement Center by fleeting area managers.* Fleeting area managers responsible for one or more CDC barges in the RNA must report the information required by this section, as set out in table 165.921(g) to this paragraph.

TABLE 165.921(g).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY FLEETING AREA MANAGERS

	24 hr contact No.	Barge(s) name and official No.	Type, name and amount of CDC onboard	Location of CDC barge (fleeting area or facility)
(1) Once daily, all CDC barges in a fleeting area	X	X	X	X
(2) Upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, by a fleet tow boat.	.....	X	X	X
(3) Any significant deviation from previously reported information (all that apply)	X	X	X	X
(4) When directed by the IRVMC	X	X	X	X

(h) *Alternative reporting.* The Ninth Coast Guard District Commander may consider and approve alternative methods to be used by a reporting party to meet any reporting requirements if:

(1) The request is submitted in writing to Commander, Ninth Coast Guard District (m), 1240 E. 9th Street, Cleveland, Ohio 44199; and

(2) The alternative provides an equivalent level of the reporting that which would be achieved by the Coast Guard with the required check-in points.

(i) Deviation from this section is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or the IRVMC.

Dated: July 21, 2003.

Ronald F. Silva,

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

[FR Doc. 03–19362 Filed 7–25–03; 3:55 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–164–1–7602b; FRL–7536–7]

Approval and Promulgation of Implementation Plans; Texas; Control of Emission of Oxides of Nitrogen From Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas State Implementation Plan. These revisions concern Control of Air Pollution from Nitrogen Compounds, Cement Kilns. The EPA is approving these SIP revisions for cement kilns as they will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standards. The EPA is approving emissions of Oxides of Nitrogen for cement kilns in accordance with the requirements of the Federal Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct