

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 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 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 (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.433 to read as follows:

#### § 117.433 Bonfouca Bayou.

The draw of the S433 Bridge, mile 7.0, at Slidell, shall open on signal, except that from 6 p.m. to 6 a.m. from November 1 through February 28 or February 29, the draw shall open on signal if at least two hours, notice is given. From March 1 through October 30, from 9 p.m. to 7 a.m. the draw shall open on signal if at least two hours, notice is given. On Monday through Friday, except Federal holidays, throughout the year, the draw need not open for the passage of vessels from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m.

Dated: July 27, 2011.

**Roy A. Nash,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 2011-21459 Filed 8-22-11; 8:45 am]

**BILLING CODE 9110-04-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-0727]

RIN 1625-AA11

#### Regulated Navigation Area; Arthur Kill, NY and NJ

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of the Arthur Kill in New York and New Jersey. This temporary interim rule is necessary to enhance navigation, vessel safety, marine environmental protection, and provide for the safety of life on the navigable waters during drilling, blasting and dredging operations in support of the U.S. Army Corps of Engineers channel deepening project. We seek comments regarding this rule and will consider those comments before issuing a final rule.

**DATES:** This rule is effective in the CFR on August 23, 2011 until 5 p.m. on April 1, 2014. This rule is effective with actual notice for purposes of enforcement from 8 a.m. on August 12, 2011 until 5 p.m. on April 1, 2014. Comments and related material must reach the Coast Guard on or before September 22, 2011 but will be accepted and reviewed by the Coast Guard through April 1, 2014, that is, for as long as the RNA is in place.

**ADDRESSES:** You may submit comments identified by docket number USCG-2011-0727 using any one of the following methods:

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

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *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 four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call or e-mail Mr. Jeff Yunker, U.S. Coast Guard Sector New York Waterways Management Division, Coast Guard; telephone 718-354-4195, e-mail [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil), or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617-223-8385, e-mail [Isaac.M.Slavitt@uscg.mil](mailto:Isaac.M.Slavitt@uscg.mil). If you have questions on viewing or submitting material to 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.

As this interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments. Alternatively, if the dredging project necessitating the interim rule is completed before April 1, 2014, and we receive no public comments that indicate a substantive need to revise the rule, we may allow it to expire on that date without further regulatory action.

#### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0727), 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 (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery or mail your comment, it will be considered as having been received by the Coast Guard when it is received at

the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2011-0727" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will consider those comments before issuing a final rule.

#### 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>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-0727" and click "Search." Click the "Open Docket Folder" in the "Actions" 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 within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 553. But you may submit a request for one using one of the four

methods specified under **ADDRESSES**. Please explain why you believe such a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. The Coast Guard has held or participated in fourteen locally announced informal waterway user meetings where waterway closures and restrictions were discussed. We anticipate holding additional informal meetings, with opportunity for public questions or comments, during this project. We will provide written summaries of any such meetings in the docket.

#### Regulatory Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the 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 immediate action is necessary to ensure the safety of the public in the vicinity of the drilling, dredging and blasting operations being conducted in the Arthur Kill. In November 2010, Northeast Dredging Company, the contractor, advised that the Arthur Kill Channel Deepening Project would require rolling two-week closures of the middle third of the Arthur Kill to conduct the drilling and blasting operations. The requested closure of the Arthur Kill would have shut down the Arthur Kill to all deep draft vessels in the area resulting in a long term disruption to cargo and oil terminal facilities operations. We advised the U.S. Army Corps of Engineers (USACE) and the contractor that the complete closure of the Arthur Kill for two-week periods during the course of the deepening project would negatively impact navigational safety on the waterway and that an alternative proposal that would keep the channel open to vessel traffic was necessary.

We participated in nine initial planning meetings with the USACE, harbor and docking pilots, tugboat operators, facility operators, and the contractors between January and April 2011. In early April 2011 the USACE, with the assistance of harbor and docking pilots, conducted simulator assessments of the drilling and blasting

areas. These simulations studied the possibility of reducing the size of the drilling and blasting areas in order to maintain one-half of the channel open at all times for vessel transits. The results of the simulation allowed the USACE to determine that, although it was possible to conduct the channel deepening without completely closing the Arthur Kill, additional coordination meetings were necessary.

Five additional meetings were held between April and June 2011 to discuss the results of the navigation simulations. In June the USACE and the contractor presented a revised drilling, blasting and dredging plan, which called for reduction in the channel width during the deepening project. The drilling, blasting and dredging operations will render a portion of the Arthur Kill unavailable to vessel navigation and decrease the overall width of the navigable channel that is available to deep draft commercial vessels. The Coast Guard initially planned to control traffic under the auspices of the Vessel Traffic Service (VTS) New York, but as a result of the June 2011 meeting with the USACE, it was determined that a Regulated Navigation Area (RNA) would be necessary. The dynamic nature of the dredging process and multitude of drilling and blasting equipment associated with the project necessitates that all mariners comply with this RNA, as the drilling and blasting equipment configuration may change on a daily basis. Immediate action is needed to control vessels operating in the reduced waterway and protect the maritime public from the hazards associated with drilling, blasting and dredging operations on a constricted waterway. Publishing a NPRM and waiting 30 days for comment would be contrary to the public interest since immediate action is needed to restrict vessel traffic and protect the maritime public from the hazards associated with drilling, blasting and dredging operations.

For the same reasons, 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**.

#### Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this interim rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment during the ongoing channel deepening project.

#### Discussion of Rule

The RNA encompasses all waters of the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach in the Arthur Kill.

Drilling and blasting operations began in the Arthur Kill on Tuesday, August 2, 2011. The project consists of dredging, drilling and underwater blasting of bedrock in the Arthur Kill navigable channel. Dredging operations will encroach on portions of the navigable channel, require the relocation of lateral aids to navigation, and create a reduction in the width of the navigable channel.

This interim rule seeks to enhance navigational safety and marine environmental protection, and promote vessel movement by reducing the potential for collisions, groundings, and the loss of lives and property. This interim rule became effective with actual notice upon being signed by the District Commander; however the Coast Guard would like to receive comments before issuing a final rule.

Any violation of the RNA described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant-mariner credentials.

The Captain of the Port (COTP) New York will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by all appropriate means to effect the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

#### Regulatory Analyses

We developed this interim 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.

#### Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

The economic impact of this rule will be severely limited for the following reasons: (1) The RNA does not prohibit vessels from transiting the area; (2) vessels will be allowed to safely transit without restrictions in areas where there are no dredges or drill barges operating; (3) vessels may be allowed to transit work areas where dredges and/or drill barges are operating unless blasting operations are underway; (4) delays resulting from blast operations are expected to last no longer than 15 minutes and occur twice daily; and (5) advance notification will be made to the maritime community via Local Notice to Mariners, Broadcast Notice to Mariners, and on the Internet at <http://homeport.uscg.mil/newyork>.

#### 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 in a portion of the Arthur Kill from August 12, 2011 until the Arthur Kill Channel Deepening Project is completed.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: although the regulated navigation area will apply to the entire width of the Arthur Kill, vessel traffic will be allowed to pass through the regulated area by coordinating with Vessel Traffic Service New York (VTSNY). Before the effective period, we will issue maritime advisories widely available to users of the waterway.

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 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 (adjusted for inflation) 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 cause 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 this action is one of a category of actions that 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 RNA. 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01-0727 to read as follows:

#### § 165.T01-0727 Regulated Navigation Area; Arthur Kill, NY and NJ.

(a) *Regulated Area.* The following area is a regulated navigation area: all waters of the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach in the Arthur Kill; bounded in the northeast by a line drawn from position 40° 38'48.637" N, 074° 09'18.204" W; to a point in position 40°38'37.815" N, 074° 09'20.245" W; and bounded in the southwest by a line drawn from position 40° 37'15.643" N, 074° 12'15.927" W; to a point in position 40° 37'15.779" N, 074° 12'08.0622" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.13 apply.

(2) All vessels must remain at least 150 feet from all drilling and blasting equipment; if a vessel must pass within 150 feet of drilling and blasting equipment for reasons of safety, they shall contact the dredge and/or blasting barge on Channel 13.

(3) No vessel shall enter or transit any work area where drill barges and/or dredges are located without the permission of Vessel Traffic Service New York (VTSNY) Director.

(4) No vessel may be underway within 1,500 feet of the blasting area during blasting operations.

(5) No vessel shall enter an area of drilling or blasting when they are advised by the drilling barge or VTSNY that a misfire or hang fire has occurred.

(6) Vessel Movement Reporting System (VMRS) users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area where dredging and drilling equipment are being operated.

(7) Each vessel transiting in the vicinity of a work area where dredges are located is required to do so at reduced speed to maintain maneuverability while minimizing the effects of wake and surge.

(8) The VTSNY Director may impose additional requirements through VTS measures, as per 33 CFR 161.11.

(c) *Effective Period.* This rule is effective from 8 a.m. on August 12, 2011 until 5 p.m. on April 1, 2014.

Dated: 12 Aug 2011.

**J.B. McPherson,**

*Captain, U.S. Coast Guard, Commander, First Coast Guard District, Acting.*

[FR Doc. 2011-21460 Filed 8-22-11; 8:45 am]

**BILLING CODE 9110-04-P**

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Parts 3 and 20

RIN 2900-AO06

#### Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Clarification

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its hearing regulations to clarify that the provisions regarding hearings before the Agency of Original Jurisdiction (AOJ) do not apply to hearings before the Board of Veterans' Appeals (Board).

**DATES:** *Effective Date:* This rule is effective August 23, 2011.