

of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In

making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or

tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### **List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR part 935 is amended as set forth below:

#### **PART 935—OHIO**

1. The authority citation for part 935 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 935.15 is amended in the table by adding a new entry in chronological order by “*Date of final publication*” to read as follows:

#### **§ 935.15 Approval of Ohio regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* June 11, 2003	* October 3, 2003	* OAC 1501:13–9–10 (A)(1), (3), (B), (B)(7), (9), (14), (14)(e), (C)(1), (2), (3), (4), (5), (D)(1), (2)(b), (E)(1), (2), (5), (F)(1), (1)(b), (1)(f), (3), (4), (4)(a), (4)(b), and (4)(c).

[FR Doc. 03–25056 Filed 10–2–03; 8:45 am]

BILLING CODE 4310–05–P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

[CGD09–03–215]

RIN 1625–AA09

#### **Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals, Milwaukee, WI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has revised the drawbridge operating regulation for the Canadian Pacific (formerly Chicago, Milwaukee, St. Paul & Pacific) railroad bridge over the Burnham Canal in Milwaukee, WI, allowing the bridge to remain closed to navigation due to infrequent use. This will allow the bridge owners to reduce maintenance and operation costs at a location where there is no known need for drawbridge openings.

**DATES:** This rule is effective November 3, 2003.

**ADDRESSES:** 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 [CGD09–03–215] and are available for inspection or copying at the Bridge Administration Branch, Ninth Coast Guard District, between 7

a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scot Striffler, Bridge Administration Branch, at the address above or phone (216) 902–6084.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

On July 21, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals, Milwaukee, WI, in the **Federal Register** (68 FR 43066). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

## Background and Purpose

The Canadian Pacific Railway bridge at mile 1.74 over Burnham Canal is a swing type bridge with a vertical clearance of approximately eight feet in the closed position. In accordance with 33 CFR 117.1093, it is currently required to open for vessels if at least two-hours advance notice is provided prior to passing. Canadian Pacific Railway requested the Coast Guard allow the bridge to be maintained in the closed to navigation position since there have been no requests from vessels to open the bridge since June 13, 1997. There are no active marine facilities along the canal, and the area in Milwaukee Harbor where the bridge is located is part of a city re-development project. Burnham Canal is a federal waterway. The waterway is reportedly no longer actively maintained by the Corps of Engineers. This final rule allows the bridge to be untended and maintained in the closed to navigation position as per 33 CFR 117.39. However, the Coast Guard will retain the authority, should conditions make such an action necessary, to order the bridge owner to restore the bridge to an operable condition within 12 months of notification from Commander, Ninth Coast Guard District. This rule will allow the railroad bridge to remain closed, as it has been, and still be in compliance with Coast Guard requirements.

In addition to the regulation for the railroad bridge, the current regulation refers to 'all other bridges across the Burnham Canal'. The only other bridge on the canal that falls within the jurisdiction of the Coast Guard Bridge Administration Program is the Interstate 94 bridge at mile 1.79, which is a fixed bridge, and should not be referred to in the drawbridge regulations. Therefore, the Coast Guard is removing this section from 33 CFR 117.1093.

## Discussion of Comments and Changes

The Coast Guard did not receive any comments on the NPRM. Therefore, no changes were made to the final rule.

## 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).

There is no known commercial or recreational use of Burnham Canal. No information was received by the Coast Guard to demonstrate impending activity on the waterway that would require the drawbridge to be operable. However, as stated, if these conditions were to change, then the bridge would be required to be operational again within 12 months of notification from the Coast Guard.

## 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.

## Assistance for Small Entities

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

## Collection of Information

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

## Federalism

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

## Unfunded Mandates Reform Act

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

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

## Taking of Private Property

This rule will not 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 would not create an environmental risk to health or risk to safety that might 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e) of the Instruction, from further environmental documentation.

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

Bridges.

#### Regulations

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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

- 2. In § 117.1093, revise paragraph (f) to read as follows:

#### § 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals.

\* \* \* \* \*

(f) The draw of the Canadian Pacific Railway bridge, mile 1.74 over Burnham Canal, need not be opened for the passage of vessels.

Dated: September 22, 2003.

**R.F. Silva,**

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

[FR Doc. 03-25187 Filed 10-2-03; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD08-03-029]

RIN 1625-AA11

#### Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) within all inland rivers of the Eighth Coast Guard District. This RNA applies 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 (IRVMC). 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:** This rule is effective on November 1, 2003. Comments and related material must reach the Coast Guard on or before January 2, 2004.

**ADDRESSES:** You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130. Commander, Eighth 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 [CGD08-03-029] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130 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 (CDR) Jerry Torok or Lieutenant (LT) Kevin Lynn, Project Managers for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589-6271.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On May 2, 2003, the Coast Guard published a temporary final rule and request for comments entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District" in the **Federal Register** (68 FR 23393). As of July 9, 2003, we received six written comments on that temporary final rule.

On July 30, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland

Rivers, Eighth Coast Guard District" in the **Federal Register** (68 FR 44696). When drafting the proposed rule in the NPRM, we considered all written comments submitted to the docket in response to the temporary final rule published on May 2, 2003 (68 FR 23393). The Coast Guard's responses to the comments are explained under the "Discussion of Comments and Changes" section of the NPRM (68 FR 44698).

As of September 15, 2003, we have received one written comment on the NPRM. No public meeting was requested so one was not held.

As indicated in our "Discussion of Comments and Changes" section below, we have considered this comment in this interim final rule and, where appropriate, we have made the rule less burdensome than the temporary final rule currently in effect. In issuing this interim final rule, we have allowed for a comment period before we 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 [CGD08-03-029], 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 before issuing any final rule.

#### Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth 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.