

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Chapter I****46 CFR Chapters I and III****49 CFR Chapter IV**

[USCG-2003-14505]

**Coast Guard Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule; correction.

**SUMMARY:** The Coast Guard published in the *Federal Register* of February 28, 2003, a document concerning technical changes to various parts of titles 33 (Navigation and Navigable Waters), 46 (Shipping), and 49 (Cargo containers) of the Code of Federal Regulations. Inadvertently, four technical changes to revise chapter headings were omitted. This document adds those four changes.

**DATES:** Effective on March 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call James McLeod, Project Manager, Office of Regulations and Administrative Law (G-LRA), Coast Guard, at 202-267-6233. If you have questions on viewing, or submitting material to, the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202-366-5149.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published a document in the *Federal Register* of February 28, 2003, (68 FR 9533) making technical changes to various parts of titles 33 (Navigation and Navigable Waters) and 46 (Shipping) of the Code of Federal Regulations. We changed "Department of Transportation" to the "Department of Homeland Security" in specified sections in 33 CFR Chapter I and 46 CFR Chapter I. Inadvertently, four technical changes revising Chapter headings in Titles 33, 46, and 49 of the Code of Federal Regulations were omitted. This document adds those changes.

■ (1) In rule FR Doc. 03-4763 published on February 28, 2003, (68 FR 9533) make the following corrections. On page 9534, in the second column, change the number of amendatory instruction "1" to "1a", add the words "COAST GUARD, DEPARTMENT OF HOMELAND SECURITY" to the heading for 33 CFR Chapter I and add a new amendatory instruction 1 to read:

■ 1. The title 33, chapter I heading is revised to read as set forth above.

■ (2) On page 9535, in the second column, add the words "COAST GUARD, DEPARTMENT OF HOMELAND SECURITY" to the heading for 46 CFR Chapter I and add a new amendatory instruction 26a to read:

■ 26a. The title 46, chapter I heading is revised to read as set forth above.

■ (3) On page 9535, in the third column immediately following amendatory instruction 30, add the heading "46 CFR Chapter III—COAST GUARD (Great Lakes Pilotage), DEPARTMENT OF HOMELAND SECURITY" and add a new amendatory instruction 31 to read:

■ 31. The title 46, chapter III heading is revised to read as set forth above.

■ (4) On page 9535, in the third column immediately following amendatory instruction 31, add the heading "49 CFR Chapter IV—COAST GUARD, DEPARTMENT OF HOMELAND SECURITY" and add a new amendatory instruction 32 to read:

■ 32. The title 49, chapter IV heading is revised to read as set forth above.

Dated: March 25, 2003.

**Robert F. Duncan,***Rear Admiral, U.S. Coast Guard, Chief Counsel.*

[FR Doc. 03-8284 Filed 4-7-03; 8:45 am]

**BILLING CODE 4910-15-P****DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[CGD05-02-020]

**RIN 1625-AA09****Drawbridge Operation Regulation; Nanticoke River, Seaford, DE****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations that govern the operation of the Norfolk Southern Railroad Bridge across the Nanticoke River, mile 39.4, in Seaford, Delaware. The final rule will increase bridge openings by extending the daytime hours of operation and reducing the required signal time for opening the draw. The change will reduce delays for navigation by allowing more draw openings.

**DATES:** This rule is effective May 8, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as

available in the docket, are part of docket CGD05-02-020 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398-6587.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On August 6, 2002, a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Nanticoke River, Seaford, Delaware" was published in the *Federal Register* (67 FR 50844). No comments on the proposed rule were received. No public hearing was requested, nor held.

**Background and Purpose**

The Nanticoke River Bridge is owned and operated by Norfolk Southern Railroad. The regulation in 33 CFR 117.243 requires the railroad bridge over the Nanticoke River, mile 39.4, in Seaford, Delaware to open on signal from May 1 through September 30 from 8 a.m. to 8 p.m. and need not be opened from 8 p.m. to 8 a.m. At all times from October 1 through April 30, the draw shall open on signal if at least four hours notice is given.

The bridge connects The Town of Blades and Seaford. This bridge is one of two railroads supplying the southern Delmarva Peninsula. Mariners do not have an alternate route. The Town of Blades requested permission to increase the number of hours the bridge will be open to marine traffic due to the increased navigation on the waterway. The Town of Blades asserted that the present regulation for this bridge is too restrictive for the increased number of mariners. Blades Economic Development Commission (BEDCO) has built an 87-slip marina in the Town of Blades, upstream from the bridge. The marina is now open, and the drawbridge needs to be opened more frequently to accommodate the increased flow of maritime traffic in this area. As the flow of vessel traffic increases, the current operating schedule of the bridge may cause vessel back-ups and potential hazardous impacts on navigation. The Town of Blades also asserts that this economic development project will draw more than the 87 mariners already projected for the marina.

The Town of Blades requested permission to increase the number of hours the bridge will be open to water

craft to avoid excessive/hazardous vessel back-ups at the bridge. Norfolk Southern Railway and local mariners developed an inter-modal compromise. The plan allows for an extended amount of time that the draw will be open, while not excessively limiting the rail traffic. This compromise will help to decrease the back-up of mariners at the bridge and thus avoid potentially hazardous/dangerous situations. The aforementioned indicates that it would be advantageous to change the drawbridge operating regulations. The Coast Guard believes that this rule change is needed and will expedite and not overburden marine traffic.

Due to the fact that the final rule will increase time/openings, all of which the bridge owner has agreed to, we anticipate only positive impacts on the boating community.

This final rule will revise 33 CFR 117.243, which regulates the scheduled openings of the Norfolk Southern Railroad Bridge across the Nanticoke River at mile 39.4.

#### 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 final 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 Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that these changes will not impede but enhance maritime traffic transiting the bridge, while still providing for the needs of the bridge owner.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule will 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 final rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities because the regulation removes current restrictions on navigation by allowing for an increased number of draw openings. In addition, maritime advisories will be widely available to users of the river about all proposed regulations and any potential impacts to navigation.

#### 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 can better evaluate its effects on them and participate in the rulemaking. In our notice of proposed rulemaking we provided a point of contact to small entities who could answer questions concerning proposed provisions or options for compliance.

#### 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 could 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 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 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 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 considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

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

Bridges.

■ For 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; 33 CFR 1.05-1(g); § 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. § 117.243 is revised to read as follows:

**§ 117.243 Nanticoke River.**

The draw of the Norfolk Southern Railway Bridge across the Nanticoke River, at mile 39.4, at Seaford, Delaware will operate as follows:

(a) From March 15 through November 15 the draw will open on signal for all vessels except that, from 11 p.m. to 5 a.m. at least 2½ hours notice will be required.

(b) At all times from November 16 through March 14 the draw will open on signal if at least 2½ hours notice is given.

(c) When notice is required, the owner operator of the vessel must provide the bridge tender with an estimated time of passage by calling 717-541-2151/2140.

Dated: March 31, 2003.

**James D. Hull,**

*Vice Admiral, U. S. Coast Guard,*

*Commander, Fifth Coast Guard District.*

[FR Doc. 03-8525 Filed 4-7-03; 8:45 am]

**BILLING CODE 4910-15-P**

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

[CGD01-03-017]

RIN 1625-AA11

**Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey**

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard is amending a Regulated Navigation Area (RNA) to add restrictions on vessels transiting the Bergen Point West Reach of the Kill Van

Kull during U.S. Army Corps of Engineers dredging operations in that area. This action is necessary to provide for the safety of life and property on navigable waters during dredging operations that impinge upon the navigable portion of the channel and require the temporary relocation of navigational aids. This action is intended to reduce the risks of collisions, groundings and other navigational mishaps.

**DATES:** This rule is effective from March 30, 2003 to September 30, 2004.

Comments and related material must reach the Coast Guard on or before June 9, 2003.

**ADDRESSES:** The Waterways Oversight Branch of Coast Guard Activities New York 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 CGD01-03-017 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commander F. Fiumano, Vessel Traffic Service, Coast Guard Activities New York at (718) 354-4191.

**SUPPLEMENTARY INFORMATION:****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 (CGD01-03-017), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material to the Coast Guard at the address under **ADDRESSES**. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Coast Guard, 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 rule in view of them.

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the

Coast Guard finds that good cause exists for not publishing an NPRM. The U.S. Army Corps of Engineers is conducting an extensive navigation improvement project in Kill Van Kull and Newark Bay, New York and New Jersey. The project, which is being conducted in nine distinct phases, began in April 1999 and will continue through approximately April 2005. In anticipation of the project and its probable impact on navigation, the Coast Guard worked with local pilots and maritime users to develop restrictions on vessels transiting the area during dredging operations. As a result of that cooperative process, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (63 FR 72219) on December 31, 1998, discussing our intention to establish a Regulated Navigation Area (RNA) for Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey. We received no letters commenting on the proposed rule. No public hearing was requested and none was held. On April 15, 1999, we published a Final Rule in the **Federal Register** (64 FR 18577) codifying the RNA at 33 CFR 165.165.

Once dredging operations began in the Bergen Point portion of the navigation improvement project, it has become evident that the provisions of the original RNA were insufficient to ensure safe navigation on that portion of the waterway. On May 16, 2002, Kill Van Kull Channel Lighted Buoys 10 and 12 (LLNR 37300 and 37310) and Bergen Point Lighted Buoy 14 (LLNR 37325) had to be relocated to facilitate dredging of the Kill Van Kull. Once those buoys were relocated, the Bergen Point Buoy was hit and moved off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey to re-establish the buoy on-station. More importantly, other vessels were unable to navigate successfully within the temporary channel boundaries. More than half of the vessels over 700 feet long transiting the area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. And there were several near collisions between tugs and barges operating in the area. We determined that a significant risk of similar mishaps existed unless additional regulations were prescribed for vessels operating in the vicinity of Bergen Point while continued dredging