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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1056]

RIN 1625–AA11

Regulated Navigation Area; Hudson River and Port of NY/NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) from Port Coeymans, New York on the Hudson River to Jersey City, New Jersey on Upper New York Bay, and from Jersey City to the Willis Avenue Bridge site on the Harlem River, New York, including all waters of the East River between these two locations. This action is necessary to provide for the safety of life on the navigable waters during the load out and transit of the Willis Avenue Bridge replacement span.

DATES: This rule is effective from July 13, 2010 through October 31, 2010. The RNA will be enforced from 3 a.m. on Monday, July 12, 2000, to 11:30 p.m. on Saturday, August 7, 2010. Comments and related material must reach the Coast Guard on or before August 12, 2010. Requests for public meetings must be received by the Coast Guard on or before August 12, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–1056 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1056 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments identified by docket number USCG–2009–1056 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, Waterways Management Division at Coast Guard Sector New York, telephone 718–354–4195, e-mail *Jeff.M.Yunker@uscg.mil.* If you have questions on viewing 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 temporary 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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–1056), 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 deliver, 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–2009–1056" 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 may change this rule based on your comments.

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–2010–0176" 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. You may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid revising this rule, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice 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. This rule establishes an RNA to provide for the safety of life on the navigable waters during the load out and transit of the Willis Avenue Bridge replacement span. It is impracticable to issue an NPRM and take public comment before July 12, 2010, when the load out and transit is scheduled to begin. Due to delays on other construction projects in the Gulf of Mexico, the calendar dates for the load out and transit were not confirmed until early May 2010. This delayed the projected arrival of specialized self propelled transporters necessary to move the Willis Avenue Bridge replacement span from its construction site at Port Coeymans, New York onto the barges transporting the bridge span to its installation site on the Harlem River in New York City. This in turn delayed the dates for all of the subsequent restrictions. Delaying either the bridge load out and transit, or creation of the RNA, is contrary to the public interest because the bridge will be a public convenience and because the RNA will provide for public safety by safeguarding both mariners and construction workers during the bridge's construction and transportation of the replacement bridge span. We are requesting public comment on the RNA, and if we receive public input that indicates a need to revise the RNA or the conditions it imposes, or raises any other significant public concerns, we will address those concerns prior to issuing any final rule. 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 New York City Department of Transportation is replacing the Willis Avenue Bridge over the Harlem River. The replacement bridge span for this project is being constructed at Port Coeymans, NY on the Hudson River, approximately 115 nautical miles north of The Battery, Manhattan, NY. The transfer of the bridge span from the Port Coeymans Terminal to two Weeks Marine barges and transit to the installation site on the Harlem River is scheduled for the week of July 12, 2010. The week of July 19, 2010 will be used as a contingency in case of delays. The installation of the bridge span on the Harlem River is scheduled for August 2, 2010.

The load out of the new Willis Avenue Bridge span involves large machinery and construction vessel operations above and upon the navigable waters between Port Coeymans on the Hudson River, Upper New York Bay, the East River, and the bridge installation site at mile 1.5 on the Harlem River. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial vessel traffic and the bridge construction crew. In order to mitigate the inherent risks involved in the construction, it is necessary to control vessel movement through the area. The Coast Guard negotiated the terms of necessary navigation restrictions with the Kiewit and Weeks Marine contractors, and with Hudson River and Sandy Hook Pilots.

Discussion of Rule

This temporary interim rule establishes an RNA on designated waters on the Hudson River and in the New York City area. It is intended to ensure the safety of the public and vessels during the transfer and transit of the 363 foot long bridge span from Port Coeymans, NY to the Harlem River, NY via Upper New York Bay and Buttermilk Channel. The enforcement times given in this discussion for the various restrictions depend on transit conditions and may be changed due to inclement weather or other circumstances. Changes will be provided to the public by the on scene patrol vessels, Coast Guard Vessel Traffic Service New York, and/or Safety Voice Broadcasts. Except for persons or vessels authorized by the Coast Guard Captain of the Port New York or the designated representative, no person or vessel may enter or remain in the RNA during the enforcement period.

No vessels will be authorized between Hudson River Light 191 LLNR 38865 and Hudson River Light 193 LLNR 38875 at Coeymans, NY from 3 a.m. on Monday, July 12, 2010 until 8 a.m. on Tuesday, July 13, 2010. In case of inclement weather or construction delays this restriction will be established from 7 a.m. on Monday, July 19, 2010 until 7 a.m. on Tuesday, July 20, 2010.

No vessels will be authorized within 100 yards of the two Weeks Marine barges once the bridge span has been loaded onto the barges at Port Coeymans. Vessels will be required to transit at No Wake speed when passing the two Weeks Marine barges.

A No Meeting and No Overtaking zone will be established as the barges and bridge span transit from Port Coeymans to just south of the entrance to Rondout Creek. This zone will be established on Tuesday, July 13, 2010 or Wednesday, July 14, 2010 for approximately 9 hours and 30 minutes based on the expected transit speed of 4 knots. In case of inclement weather or construction delays this restriction will be established from 5:30 a.m. to 3 p.m. on Tuesday, July 20, 2010.

A No Meeting and No Overtaking zone will be established as the barges and bridge span transit between the eastern and western sections of Anchorage Ground No. 19 on the Hudson River. This zone will be established for approximately 60 minutes on Tuesday, July 13, or Wednesday, July 14, 2010, based on the expected transit speed of 4 knots. In case of inclement weather or construction delays this restriction will be established from 7:45 a.m. to 8:45 a.m. on Wednesday, July 21, 2010.

A No Meeting and No Overtaking zone will be established as the barges and bridge span transit Buttermilk Channel from its entrance at Anchorage Channel until the barges pass the northwest corner of Pier 2, Brooklyn. This zone will be established on Wednesday, July 14, 2010 from approximately 11 a.m. to 11:45 a.m. based on the expected transit speed of 4 knots.

The East River will be closed to all other vessel traffic between the Con Ed East River Generating Station at East 14th Street, Manhattan, and the Hell Gate Railroad Bridge at river mile 8.2. This restriction will be established on Wednesday, July 14, 2010 from approximately 12:20 p.m. to 1:45 p.m. based on the expected transit speed of 4 knots.

The Harlem River will be closed to all other vessel traffic between the 125th Street/Triborough/RFK Bridge (mile 1.3) and 500 feet north of the Willis Ave Bridge (mile 1.5). This restriction will be established on Monday, August 2, 2010 from approximately 5 a.m. to 6 p.m. during the installation of the bridge span.

Regulatory Analyses

We developed this 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.

Regulatory Planning and Review

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.

We expect the economic impact of this rule will not be significant due to the limited duration that the regulated area would be in effect and enforced. Also, the Hudson River closure during the transfer of the bridge span from shore to the barges has been scheduled on a weekday when it is expected to have minimal impact on recreational vessels. The Harlem River closure will be coordinated with vessel operators that regularly schedule Manhattan Island tours.

In addition, advance notifications will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts and online 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 or anchor in a portion of the Hudson, East and Harlem Rivers and Upper New York Bay south of 42°29′11.692″ N, 073°47′14.142″ W (Hudson River LIGHT 193 LLNR 38875) from 3 a.m. on July 12, 2010 to 11:30 p.m. on August 7, 2010.

This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will only stop vessels from transiting three specified locations on the Hudson, Harlem, and East Rivers, the 24-hour closure of the Hudson River at Port Coeymans has been scheduled on a weekday to reduce the impact to recreational vessels that are more prevalent on weekends, the East River closure between the Con Ed East River Generating Station and the Hell Gate Railroad Bridge will only be in effect for approximately 85 minutes and vessels can adjust their schedules, the Harlem River closure at the bridge installation site will be coordinated with vessel operators that regularly schedule Manhattan Island tours; the No Meeting and No Overtaking zones are established in areas identified by Weeks Marine, Hudson River and Sandy Hook Pilots as requiring additional safety measures due to the waterway characteristics and characteristics of vessels using the waterways in those locations. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

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 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.lD, 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 which 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 establishing of a RNA and therefore falls within the categorical exclusion noted above. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. Any comments received concerning environmental impacts will be considered and changes made to the environmental analysis checklist and categorical exclusion determination as appropriate.

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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.t01–1056 to read as follows:

§ 165.t01–1056 Regulated Navigation Area; Hudson River and Port of New York and New Jersey.

(a) *Description of the regulated navigation area (RNA).* The regulated area includes all waters of the Hudson River south of 42°29′11.692″ N, 073°47′14.142″ W (Hudson River LIGHT 193 LLNR 38875), all waters of Upper New York Bay north of a line drawn from the northeast corner of the Global Container and Northeast Auto Terminal to the northwest corner of Pier 41, Red Hook Brooklyn, all waters of the East River from The Battery to the Hell Gate Railroad Bridge at river mile 8.2, and all waters of the Harlem River from the Harlem River Foot Bridge at river mile 0.0 to 500 feet north of the Willis Avenue Bridge at river mile 1.5.

(b) *Definitions:* (1) Designated representative means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port New York (COTP).

(2) Weeks Marine barges means a barge operated by the Weeks Marine Company.

(c) *Regulations.* In addition to 33 CFR 165.10, 165.11, and 165.13, the following restrictions or conditions apply within this RNA:

(1) No person or vessel may enter, transit, or remain in the RNA on the Hudson River between 42°28′42.100″ N, 073°47′19.100″ W (Hudson River LIGHT 191 LLNR 38865) and 42°29′11.692″ N, 073°47′14.142″ W (Hudson River LIGHT 193 LLNR 38875); on the East River between 40°43′36.210″ N, 073°58′17.750″ W, at the Con Ed East River Generating Station at East 14th Street Manhattan and the Hell Gate Railroad Bridge at river mile 8.2; on the Harlem River between the 125th Street/Triborough/RFK Bridge (mile 1.3) and 500 feet north of the Willis Ave Bridge (mile 1.5).

(2) No commercial vessel may meet, or overtake, the Weeks Marine barges when they are transiting the following waters:

(i) The Hudson River from Port Coeymans, NY to 41°54′59.712″ N, 073°57′36.126″ W (Hudson River Lighted Buoy 73 LLNR 38183) 500 yards south of the entrance to Rondout Creek.
(ii) The Hudson River between the eastern and western sections of Anchorage Ground No. 19.

(iii) Buttermilk Channel from its entrance at Anchorage Channel, about 175 yards north of 40°40′18.971″ N, 074°02′24.006″ W (Gowanus Flats Lighted Bell Buoy 32 LLNR 34990) until the barges pass the northwest corner of Pier 2 Brooklyn.

(iv) The Harlem River from the 103rd Street Foot Bridge (mile 0.0) to the Willis Ave Bridge at mile 1.5.

(2) No vessels are authorized within 100 yards of the two Weeks Marine barges while carrying the bridge span.

(3) All vessels must transit at reduced speed to minimize wake and surge when transiting past the Weeks Marine barges carrying the bridge span.

(4) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard or other law enforcement vessel by siren, radio, flashing light, or other means the operator of a vessel shall proceed as directed.

(5) Vessel operators desiring to enter or operate within the RNA shall request permission to do so by contacting the COTP at 203–354–4195, or VTS NY via VHF Channel 13 or 16.

(d) *Enforcement Period:* The RNA will be enforced from 3 a.m. on Monday, July 12, 2010, to 11:30 p.m. on Saturday, August 7, 2010.

Dated: June 4, 2010.

D.A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

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