

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 did not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph 34(f), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environment documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES. This rule fits paragraph 34(f) of Commandant Instruction M16475.1D as it establishes two special anchorage areas.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05-1(g); and Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.60 add new paragraphs (o-4) and (o-5) to read as follows:

§ 110.60 Port of New York and vicinity

* * * * *

(o) * * *

(o-4) *Hudson River, at Main Street, Yonkers.* That portion of the Hudson River starting on shore at point 40°56'15.4" N, 073°54'11.2" W; thence northwest to point 40°56'16.7" N, 073°54'20.2" W; thence south to point 40°56'08.9" N, 073°54'22.6" W; thence southeast to point 40°56'07.9" N, 073°54'16.9" W; thence south to the Recreational Pier of the City of Yonkers at point 40°56'07.0" N, 073°54'17.3" W.

Note: This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These

regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the local government to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited. Mariners are encouraged to contact the local harbor master for any additional ordinances and to ensure compliance with additional applicable state and local laws.

(o-5) *Hudson River, at JFK Marina, Yonkers.* That portion of the Hudson River starting on shore at point 40°57'28.0" N, 073°53'46.1" W; thence west to point 40°57'30.5" N, 073°53'56.7" W; thence southwest to point 40°57'07.5" N, 073°54'06.2" W; thence east to shore at point 40°57'06.0" N, 073°53'59.5" W.

Note: This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the local government to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited. Mariners are encouraged to contact the local harbor master for any additional ordinances and to ensure compliance with additional applicable state and local laws.

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Dated: November 9, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting

Commander, First Coast Guard District.

[FR Doc. 04-26337 Filed 11-29-04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08-04-010]

RIN 1625-AA09

Drawbridge Operation Regulation; Bayou Portage, Pass Christian, MS

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the requirements for the operation of the draw of the Henderson Avenue bascule bridge across Portage Bayou, mile 2.0 at Pass Christian, MS. The old low-level bascule span has been removed and the new mid-level bascule span bridge has been constructed on the same alignment and completed. This final rule establishes a two-hour notice requirement for an opening of the draw for the bridge.

DATES: This rule is effective December 30, 2004.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130-3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 1, 2004 we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Bayou Portage, Pass Christian, MS in the **Federal Register** [69 FR 17122]. Concurrent with publishing the NPRM, the Coast Guard published a temporary rule in the same **Federal Register** [69 FR 17055] that established a two-hour notice requirement for an opening of the draw to navigation. The temporary rule was in effect from April 10, 2004 through October 10, 2004. The purpose of the temporary rule was to provide interim operating requirements for the Henderson Avenue bascule span bridge while the Coast Guard conducted the rulemaking to implement permanent regulations for the operation of the bridge. We received one letter commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The old Henderson Avenue low-level bascule span bridge across Bayou Portage at Pass Christian, MS has been demolished and removed and the new, mid-level bascule span bridge has been constructed on the exact same alignment. It was opened to vehicular traffic and placed in service on April 10, 2004. A special operating regulation previously existed for the old bridge,

which stated that the draw of the bridge would open on signal if at least two hours notice was given. When the old bridge was removed, the special operating regulation was removed. The new bridge would normally have been required to open on signal as per 33 CFR 117.5. However, since the new bridge provides significantly greater vertical clearance in the closed-to-navigation position than the old bridge, it was anticipated that even fewer navigation openings would be required than was required for the old bridge and that it is not necessary to have the bridge manned 24 hours per day, seven days per week. Therefore, the Harrison County Board of Supervisors requested that the same two-hour notice for an opening to navigation be required for the new bridge as was for the old bridge.

During the period the temporary rule has been in effect, an average of 11 vessels per month required openings for passage through the bridge. Bridge openings for the months of June, July and August, 2004 are considered valid and were used in this average. The month of September was discounted due to the passing of several tropical storms and Hurricane Ivan, which created a highly unusual demand for the bridge to open for vessels seeking safe harbor in emergency situations. The average for bridge openings of the old bridge, during the two years prior to its removal was approximately 64 openings per month. After evaluating this data, the Coast Guard has determined that it is unnecessary for a bridge tender to man the bridge 24 hours per day and that a permanent special drawbridge operating regulation is warranted.

This final rule provides that the draw of the Henderson Avenue bascule span bridge across Bayou Portage, mile 2.0 at Pass Christian, MS will open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Discussion of Comments and Changes

One comment was received in response to the NPRM. The U.S. Fish and Wildlife Service sent a letter dated May 19, 2004 stating that they have no objection to the proposed special operating regulation. No changes were made to the proposed regulation.

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).

A special operating regulation existed for the old, low-level span bridge, which required a two-hour notice for an opening of the draw. During the many years that the old bridge operated under that regulation, the Coast Guard has not received any complaints regarding the drawbridge operating schedule. The new bridge has been constructed on exactly the same alignment as the old bridge. Since the navigational clearances of the new bridge exceed those of the old bridge the number of requests for openings were predicted to be fewer. Data collected during the approximate 3-month test period indicate that this prediction was accurate. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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 have no impact on any small entities because the regulation will apply to a new bridge, which replaced a bridge on which the same regulation previously existed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this 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).

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. No comments were received as a result of the NPRM, relative to federalism and no changes to the proposed regulation were made.

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 the preamble. No comments were received as a result of the NPRM, relative to unfunded mandates and no changes to the proposed regulation were made.

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. No comments were received as a result of the NPRM, relative to the taking of private property and no changes to the proposed regulation were made.

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. No comments were received as a result of the NPRM, relative to civil justice reform and no changes to the proposed regulation were made.

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 cause an environmental risk to health or risk to safety that might disproportionately affect children. No comments were received as a result of the NPRM, relative to protection of children and no changes to the proposed regulation were made.

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. No comments were received as a result of the NPRM, relative to Indian tribal governments and no changes to the proposed regulation were made.

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. No comments were received as a result of the NPRM, relative to energy effects and no changes to the proposed regulation were made.

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 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 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. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this proposed rule will alter the normal operating conditions of the drawbridges, it falls within this exclusion. A "Categorical Exclusion Determination" is available in the docket indicated under **ADDRESSES**. No comments were received as a result of the NPRM, relative to any environmental issues and no changes to the proposed regulation were made.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out 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. Section 117.684 is added to read as follows:

§ 117.684 Bayou Portage.

The draw of the Henderson Avenue Bridge, mile 2.0, at Pass Christian, MS shall open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Dated: November 10, 2004.

J.W. Stark

*Acting Captain, U.S. Coast Guard,
Commander, 8th Coast Guard Dist.*

[FR Doc. 04–26338 Filed 11–29–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0005; FRL–7838–3]

Approval and Promulgation of State Implementation Plans; Indiana; Rules To Control Particulate Matter and Carbon Monoxide From Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 30, 2002, and January 10, 2003, Indiana submitted a plan to EPA which contained revised and updated rules to control emissions of particulate matter (PM) from incinerators and carbon monoxide (CO) from incinerators and other industrial categories. The rule changes accomplish several objectives. First, they re-adopt useful elements of regulations which were scheduled to expire because of "sunset requirements" under the Indiana Code. In addition, they incorporate by reference a number of applicable EPA rules affecting certain types of incineration units and clarify which limits pertain to other types of units. The revised requirements will apply to those incinerators in the State where Federal rules or guidelines do not apply. Finally, Indiana has eliminated references to language which is outdated and unclear. EPA is taking final action to approve this State plan revision.

DATES: This rule is effective January 31, 2005, unless EPA receives relevant adverse written comments by December 30, 2004. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in e-Docket (RME) ID No. R05–OAR–2004–IN–0005 by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Web site: <http://docket.epa.gov/rmepub/index.jsp> Regional Material in e-Docket (RME), EPA's electronic public docket and