

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[CGD 05-01-006]

RIN 2115-AE84

**Regulated Navigation Area; Cape Fear River and Northeast Cape Fear River, Wilmington, North Carolina****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a Regulated Navigation Area (RNA) for the Cape Fear River and Northeast Cape Fear River. This action is necessary because of the extensive channel deepening project involving dredging, drilling, and blasting being undertaken by the U. S. Army Corps of Engineers. The RNA is needed to ensure the safety of vessels transiting the Cape Fear River and Northeast Cape Fear River during dredging, drilling, and blasting operations associated with the deepening project.

**DATES:** Comments and related material must reach the Coast Guard on or before July 2, 2001.

**ADDRESSES:** You may mail comments and related material to the Waterways Management Branch (CGD05-01-006), Coast Guard Marine Safety Office Wilmington, 1502 23rd Street, Wilmington, NC 28405. Or deliver comments to the Marine Safety Office at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Management Branch of Coast Guard Marine Safety Office Wilmington 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, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Wilmington, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ensign David Dixon, Asst. Chief, Port Operations Department, Coast Guard Marine Safety Office Wilmington at (910) 772-2208, or the Waterways Management Branch at (910) 772-2180.

**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 (CGD 05-01-006), 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. We may change this proposed rule in view of them.

The Coast Guard is shortening the comment period on this regulation to 30 days. This proposed regulation is necessary because of the safety concerns associated with the extensive channel deepening project. The drilling, blasting, and dredging is scheduled to begin on 01 August 2001. There is insufficient time to publish a rule 30 days before the project begins and provide for a comment period longer than 30 days. It is in the public interest to have the regulation in place on 01 August 2001 when operations resume.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Marine Safety Office Wilmington 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**

The Cape Fear River and Northeast Cape Fear River are the proposed areas to be designated as a RNA. The proposed RNA is to enhance vessel safety during the extensive channel deepening project being undertaken by the U. S. Army Corps of Engineers, which involves dredging, drilling and blasting in these areas. Current channel depths restrict the full economy of existing and future generations of deep draft vessels. This project, which is expected to last approximately six years (completion is expected by 2006), will deepen the existing channel of twenty five (25) feet at the upstream limits of the deepening project and forty (40) feet at the entrance channel to thirty four (34) feet and forty four (44) feet, respectively, to accommodate the deeper draft vessels.

Dredging work within the RNA will be conducted in five distinct areas: Ocean Bar II, Horseshoe Shoal, Passing Lane & Anchorage Basin, Big Island, and the Northeast Cape Fear River. Drilling

or blasting is expected to occur within the Passing Lane & Anchorage Basin, Big Island, and the Northeast Cape Fear River work areas. Drilling and blasting is not expected to occur at the Ocean Bar II and Horseshoe Shoal work areas although dredging will still take place. During the project, the RNA will impose channel restrictions and other safety measures to facilitate the dredging operations and enhance navigation safety. The area has been and will continue to be available for use by the general public. The marine industry, and other users of the Cape Fear River and Northeast Cape Fear River, have been consulted by the U. S. Coast Guard and the U. S. Army Corps of Engineers at various fora throughout the past year. The parameters of the RNA are a direct result of the comments received from the marine industry, and the other users of the waters, and information obtained from the U. S. Army Corps of Engineers.

**Discussion of Proposed Rule**

The proposed RNA encompasses: All waters of the Cape Fear River and Northeast Cape Fear River from the Bald Head Shoal Channel (Entrance Channel) to mile 30.7 on the Northeast Cape Fear River.

This proposed rule is necessary to safeguard marine traffic from the dangers of the dredging, drilling, and blasting associated with the deepening project. Because of the safety issues involved, all mariners are reminded to exercise caution while transiting or operating in the RNA. The active work areas, control vessels, and blast sites will be identified via Broadcast Notice to Mariners or Local Notice to Mariners. Control vessels shall monitor VHF-FM 16.

The regulations are divided between vessel types. All vessels will be required to: inform themselves of the active work areas; contact and receive permission from the control vessel for that work area before entering the active work area; transit active work areas at no wake speed or the minimum speed necessary to maintain steerage; during blasting operations all vessels are prohibited from entering an area of 500 yards surrounding the blast site; and upon notification of a misfire or hangfire, all vessels underway in the RNA shall proceed to clear the active work area in which the misfire or hangfire occurred. These requirements are to provide for safe navigation within the RNA.

For waterway traffic management purposes, vessels over 300 gross tons and tugs with tows will be required to contact the COTP 12 hours before vessel movement within the RNA.

Specific additional restrictions are also proposed for certain vessels operating or transiting within the RNA. Vessels of 300 gross tons or greater and tugs with tows: will, prior to entering the RNA, ensure that they have sufficient propulsion and directional control to safely navigate the RNA under the prevailing conditions; will be prohibited from meeting or overtaking vessels of 300 gross tons or greater or tugs with tows in active work areas or within one nautical mile of an active work area. Vessels of 300 gross tons or greater will be prohibited from entering the RNA when they are advised that a misfire or hangfire has occurred. For any vessel with another vessel/barge in tow transiting an active work area, the hawser or wire length of the tow must not exceed 275 feet, measured from the towing bit on the tug to the point where the hawser or wire connects with the towed vessel or barge.

The proposed RNA will only be effective during the months of August, September, October, November, December and January. If there is a need to extend the proposed RNA beyond those months, we will issue a Temporary Final Rule to cover that additional time period. Publication of these Temporary Final Rules will be made in advance in the **Federal Register**, as well as through Local Broadcast Notice to Mariners.

The Captain of the Port, Wilmington may, upon written request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely.

#### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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).

For the following reasons, we expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

(1) This rule only affects a limited area of water for limited periods of time. Vessels will only be restricted from transiting the work areas during blasting operations. The estimated delays resulting from blasting are expected to last no longer than sixty (60) minutes

and occur no more than two (2) times daily in any one area.

(2) Requiring vessels over 300 gross tons and tugs with tows to contact the COTP 12 hours before vessel movement within the RNA will permit the COTP to review additional traffic management considerations for vessels which are tidal dependent or draft restrictive.

(3) If deemed necessary, the Captain of the Port, Wilmington may, upon written request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. A written application for deviation must be received not less than 48 hours before intended operation and must state the need and describe the proposal.

(4) Advance notifications will be made to the local maritime community by the Local Notice to Mariners, facsimile, marine information broadcasts, and at Cape Fear Waterways Management Council meetings.

(5) Based upon discussions with and comments received from the maritime industry, other users of the waterway, and the U.S. Army Corps of Engineers, the proposed regulations have been narrowly tailored in scope to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605 (b) that this Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: Shipping companies, towing companies, dredging companies, commercial fishing vessels and recreational vessels.

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 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS David Dixon, Asst. Chief, Port Operations, Coast Guard Marine Safety Office Wilmington at (910) 772–2208 or the Waterways Management Branch at (910) 772–2180.

#### Collection of Information

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

#### Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

#### Taking of Private Property

This proposed rule would not effect 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 proposed 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 proposed 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.IC, this proposed rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a Regulated Navigation Area. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### 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.

#### 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 proposes to amend 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. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. Add § 165.540 to read as follows:

#### § 165.540 Regulated Navigation Area; Cape Fear River, Northeast Cape Fear River, Wilmington, North Carolina.

(a) *Description of the Regulated Navigation Area (RNA)*. The RNA encompasses all waters of the Cape Fear River and Northeast Cape Fear River from the Bald Head Shoal Channel (Entrance Channel) to mile 30.7 on the North East Cape Fear River.

(b) *Work areas*. Dredging work within the RNA will be conducted in five distinct areas: Ocean Bar II, Horseshoe Shoal, Passing Lane & Anchorage Basin, Big Island, and the Northeast Cape Fear River. Drilling or blasting is expected to occur within the Passing Lane &

Anchorage Basin, Big Island, and the Northeast Cape Fear River work areas. The blast sites within the RNA, will be identified and made available to the public through: Broadcast Notice to Mariners or Local Notice to Mariners; direct contact with the control vessel on channel 16 VHF-FM; direct contact with the contractor; or through the Captain of the Port on VHF marine Band Radio, channels 13 and 16; or at telephone number (910) 772-2200. In addition, dredge and blasting companies will have a control vessel present at the site of each blast.

(c) *Effective period*. This section is effective during the months of August, September, October, November, December, and January, each year.

(d) *Definitions*.

*Active work area* means a work area in which blasting, drilling, or dredging operations are currently taking place.

*Blasting operations* means the detonation of explosives on the river bottom.

*Blast site* means the area where explosive material is handled during loading, including the perimeter formed by the loaded blast holes and fifty (50) feet (15.2 meters) in all directions from loaded holes.

*Captain of the Port* means the Coast Guard officer designated by the Commandant to command the Captain of the Port Zone as described in 33 CFR part 3 subpart 3.25-20.

*Control vessel* means the vessel at an active work area which coordinates operations within the active work area.

*Hangfire* means a blast that fails to detonate at initiation, but detonates at a later time.

*Mile* means the distance from Bald Head Shoal Channel (Entrance Channel) to a point up river. It does not mean there is a physical aid to navigation in the channel marking the distance. Miles are measured as statute miles.

*Misfire* means a blast that fails to detonate completely after an attempt at initiation. Also the explosive material that failed to detonate as planned.

*RNA* means regulated navigation area. *Work area* means those places within the RNA where dredging, drilling, and blasting shall be conducted.

(e) *Description of Work Areas in the RNA*. (1) *Ocean Bar II, mouth of Cape Fear*. The work area includes: part of Bald Head Shoal Channel, Smith Island Channel, Baldhead Caswell Channel, Southport Channel, Battery Island Channel, Lower Swash Channel, and the majority of Snows Marsh Channel. The downstream end of the work area (centerline coordinates: Latitude 33° 50'43.668"N, Longitude 78°01'40.068"W (NAD 1983)) is located southeast of

Cape Fear River Channel Lighted Buoy 8 (LL 30350), approximately 2,560 feet east of the centerline of the existing Bald Head Shoal Channel. Upstream end of the work area is located 1,200 feet downstream of intersection of Snows Marsh Channel and Horseshoe Shoal Channel at turn six (mile 7.5, approximately 1,150 feet downstream of Cape Fear River Channel Lighted Buoy 25 (LL 30530/39965)).

(2) *Horseshoe Shoal*. The work area includes: Horseshoe Shoal Channel and part of Snows Marsh Channel.

Downstream end of the work area is located 1,200 feet downstream of intersection of Snows Marsh Channel and Horseshoe Shoal Channel (mile 7.5, approximately 1,150 feet downstream of Cape Fear River Channel Lighted Buoy 25 (LL 30530/39965)). Upstream end of the work area is located at the intersection of Horseshoe Shoal Channel and Reaves Point Channel (mile 8.9, at about Cape Fear River Channel Lighted Buoy 27 (LL 30550/39945)).

(3) *Big Island*. The work area includes: part of Keg Island Channel, Lower Big Island Channel, Upper Big Island Channel, and part of Lower Brunswick Channel. Downstream end of the work area is approximately 2,230 feet upstream of the intersection of Upper Lilliput Channel and Keg Island Channel (mile 18.6, approximately 1,320 feet downstream of Cape Fear River Channel Lighted Buoy 46 (LL 30765) and approximately 2,300 feet upstream of Cape Fear River Channel Lighted Buoy 44 (LL 30750)). Upstream end of the work area is approximately 2,680 feet upstream of intersection of Upper Big Island Channel and Lower Brunswick Channel (mile 21.5, approximately 1,620 feet upstream of Cape Fear River Channel Lighted Buoy 56 (LL 30830) and approximately 590 feet downstream of the Carolina Power & Light Company (CP&L) overhead power line crossing).

(4) *Passing Lane and Anchorage Basin*. There are two separate work areas for this contract, separated by the Big Island Contract.

(i) *Passing Lane* work area is located immediately downstream of the Big Island contract work area. The work area includes: Reaves Point Channel, Lower Midnight Channel, Upper Midnight Channel, Lilliput Channel, and part of Keg Island Channel. Downstream end of Passing Lane work area is the intersection of Horseshoe Shoal Channel and Reaves Point Channel (mile 8.9, at about Cape Fear River Channel Lighted Buoy 27 (LL 30550/39945)). Upstream end of the Passing Lane work area is approximately 2,230 feet upstream of

intersection of Upper Lilliput Channel and Keg Island Channel (mile 18.6, approximately 1,320 feet downstream of Cape Fear River Channel Lighted Buoy 46 (LL 30765) and approximately 2,300 feet upstream of Cape Fear River Channel Lighted Buoy 44 (LL 30750)).

(ii) Anchorage Basin work area is located immediately upstream of the Big Island contract work area. The work area includes: part of Lower Brunswick Channel, Fourth East Jetty Channel, Between Channel, and Anchorage Basin Channel. Downstream end of Anchorage Basin work area is approximately 2,680 feet upstream of intersection of Upper Big Island Channel and Lower Brunswick Channel (mile 21.5, approximately 1,620 feet upstream of Cape Fear River Channel Lighted Buoy 56 (LL 30830) and approximately 590 feet downstream of the CP&L overhead power line crossing). Upstream end of Anchorage Basin work area is the Cape Fear Memorial Bridge (mile 27.2).

(5) *Northeast Cape Fear River*. The downstream end of the work area is the Cape Fear Memorial Bridge (mile 27.2). Upstream end of the work area (approximately mile 30.7) is on the Northeast Cape Fear River and is approximately 700 feet upstream of the turning basin located opposite Koch Sulfur Products Co. and approximately 90 feet downstream of the submerged gas pipeline crossing.

(f) *Regulations*. (1) Blasting, drilling, and dredging operations raise many safety issues for vessels transiting the RNA. All mariners are reminded to exercise caution while transiting or operating in the RNA.

(2) Active work areas, control vessels, and blast sites will be identified via Broadcast Notice to Mariners or Local Notice to Mariners. Control vessels shall monitor channel 16 VHF-FM.

(3) The following requirements apply to all vessels.

(i) All vessels shall inform themselves of the active work areas prior to entering the RNA.

(ii) All vessels shall contact and receive permission from the control vessel for that work area before entering the active work area.

(iii) All vessels transiting an active work area shall do so at no wake speed or the minimum speed necessary to maintain steerage.

(iv) During blasting operations all vessels are prohibited from entering an area of 500 yards surrounding the blast site. Upon notification of a misfire or hangfire, all vessels underway in the RNA shall proceed to clear the active work area in which the misfire or hangfire occurred.

(4) Vessels over 300 gross tons and tugs with tows are required to contact the COTP 12 hours before vessel movement within the RNA.

(5) Vessels of 300 gross tons or greater shall be prohibited from entering the RNA when they are advised that a misfire or hangfire has occurred.

(6) For any vessel with another vessel/ barge in tow transiting an active work area, the hawser or wire length of the tow shall not exceed 275 feet, measured from the towing bit on the tug to the point where the hawser or wire connects with the towed vessel or barge.

(7) Vessels of 300 gross tons or greater and tugs with tows, shall, prior to entering the RNA, ensure that they have sufficient propulsion and directional control to safely navigate the RNA under the prevailing conditions.

(8) Vessels of 300 gross tons or greater and tugs with tows are prohibited from meeting or overtaking vessels of 300 gross tons or greater or tugs with tows in active work areas or within one nautical mile of an active work area.

(9) *Waiver*. The Captain of the Port, Wilmington may, upon written request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received not less than 48 hours before intended operation and must state the need and describe the proposal.

Dated: May 18, 2001.

**T.C. Paar,**

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

[FR Doc. 01-13644 Filed 5-30-01; 8:45 am]

**BILLING CODE 4910-15-U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IN132-1b; FRL-6985-4]

### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to particulate matter emissions regulations for Illinois Cereal Mills, Incorporated (Illinois Cereal Mills). This facility is located in Marion County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on August 2, 2000 as an amendment to its State

Implementation Plan (SIP). The revisions are the relaxation of one limit and the tightening of one other limit. These SIP revisions result in no change in the overall particulate matter emissions.

**DATES:** The EPA must receive written comments on this proposed rule by July 2, 2001.

**ADDRESSES:** You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-6524, E-Mail Address: rau.matthew@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

### Table of Contents

- I. What actions are EPA taking today?
- II. Where can I find more information about this proposal and the corresponding direct final rule?

### I. What Actions Are EPA Taking Today?

The EPA is proposing to approve revisions to the total suspended particulate emissions regulations for Illinois Cereal Mills in Marion County, Indiana. IDEM submitted the revised regulation on August 2, 2000 as an amendment to its SIP.

The revisions are the relaxation of one limit for a boiler and the tightening of one other limit for the head house portion of a grain elevator. These SIP revisions result in no change in the overall TSP emissions.

### II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.