

preliminarily does not believe that any such entities would be “small entities” as defined in Exchange Act Rule 0–10.<sup>53</sup> Feedback from industry participants about the security-based swap markets indicates that only persons or entities with assets significantly in excess of \$5 million (or with annual receipts significantly in excess of \$7 million) participate in the security-based swap market. Even to the extent that a handful of transactions did have a counterparty that was defined as a “small entity” under the Commission Rule 0–10, we believe it is unlikely that proposed Rule 9j–1 would have a significant economic impact on such entity, as the rule prohibits fraudulent and manipulative acts, activities which are in most cases already prohibited. Finally, because the proposed rule applies to any person, the proposed rule applies equally to large and small entities and therefore would not have a disproportionate impact on small entities. Therefore, the Commission preliminarily does not believe that proposed Rule 9j–1 will have an impact on “small entities” in terms of the prohibitions included in the proposed rule.

For the foregoing reasons, the Commission certifies that proposed Rule 9j–1 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

#### XI. Statutory Authority

Pursuant to Exchange Act and, particularly, Sections 2, 3(b), 9(i), 9(j), 10, 15, 15F, and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78i(i), 78i(j), 78j, 78o, 78o–8, and 78w(a), the Commission is proposing a new antifraud rule, Rule 9j–1, to address fraud, manipulation, and deception in connection with security-based swaps.

#### List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

#### Text of the Proposed Rule

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding an authority for § 240.9j–1 to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78b, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78o–8, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

Section 240.9j–1 is also issued under sec. 943, Pub. L. No. 111–203, 124 Stat. 1376.

2. Add § 240.9j–1 to read as follows:

#### § 240.9j–1. Prohibition against fraud, manipulation, and deception in connection with security-based swaps.

It shall be unlawful for any person, directly or indirectly, in connection with the offer, purchase or sale of any security-based swap, the exercise of any right or performance of any obligation under a security-based swap, or the avoidance of such exercise or performance,

(a) To employ any device, scheme, or artifice to defraud or manipulate;

(b) To knowingly or recklessly make any untrue statement of a material fact, or to knowingly or recklessly omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(c) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(d) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

By the Commission.

Dated: November 3, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–28136 Filed 11–5–10; 8:45 am]

BILLING CODE 8011–01–P

#### DEPARTMENT OF HOMELAND SECURITY

#### United States Coast Guard

#### 33 CFR Part 167

[USCG–2010–0833]

#### Port Access Route Study: In the Bering Strait

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of study; request for comments.

**SUMMARY:** The Coast Guard (USCG) is conducting a Port Access Route Study (PARS) to evaluate: The continued applicability of and the need for modifications to current vessel routing measures; and the need for creation of new vessel routing measures in the Bering Strait. The goal of the study is to help reduce the risk of marine casualties and increase the efficiency of vessel traffic in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before May 9, 2011 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2010–0833 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *Fax:* 202–493–2251.

- *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.

- *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 notice of study, call or e-mail Lieutenant Faith Reynolds, Project Officer, Seventeenth Coast Guard District, telephone 907–463–2270; e-mail [Faith.A.Reynolds@uscg.mil](mailto:Faith.A.Reynolds@uscg.mil); or George Detweiler, Office of Waterways

<sup>53</sup> See 17 CFR 240.0–10(a).

Management, Coast Guard, telephone 202-372-1566, e-mail [George.H.Detweiler@uscg.mil](mailto:George.H.Detweiler@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee K. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We encourage you to participate in this study 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.

**Submitting comments:** If you submit comments, please include the docket number for this notice (USCG-2010-0833), 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, or by fax, mail or hand delivery, but please use only one of these means. 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 "Notices" and insert "USCG-2010-0833" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. If you submit them 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.

**Viewing comments and documents:** To view comments and 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-2010-0833" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting 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, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### Definitions

The following definitions (except "Regulated Navigation Area") are from the International Maritime Organization's (IMO's) publication "Ships' Routeing" Tenth Edition 2010 and should help you review this notice:

**Area to be avoided (ATBA)** means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

**Deep-water route** means a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on the chart.

**Inshore traffic zone** means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

**Precautionary area** means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

**Recommended route** means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

**Recommended track** is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

**Regulated Navigation Area (RNA)** means a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

**Roundabout** means a routing measure comprising a separation point or

circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

**Separation zone or separation line** means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of ship proceeding in the same direction.

**Traffic lane** means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

**Traffic Separation Scheme (TSS)** means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

**Two-way route** means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

**Vessel routing system** means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

#### Background and Purpose

##### Requirement for Port Access Route Studies

Under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223(c)), the Commandant of the Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of potential traffic density and the need for safe access routes for vessels before establishing or adjusting fairways or TSSs. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

### Previous Port Access Route Studies

A port access route study was announced in the **Federal Register** on April 16, 1979 (44 FR 22543) and modified on January 31, 1980 (45 FR 7026) that studied the whole of Alaska's maritime coast. Notice of study results were published on December 14, 1981 (46 FR 61049). Only a portion of the current study area was included in the previous port access route study, as the previous study excluded all areas west of 170 degrees West longitude and also did not consider areas north of the Bering Strait.

### Necessity for a New Port Access Route Study

The Coast Guard is always seeking ways to enhance the safety of life at sea. Since 2007's record minimum for summer sea ice cover in the Arctic, international attention has been focused on the region and its potential accessibility for shipping and natural resource exploration. One significant study released in April 2009 by the Arctic Council entitled "Arctic Marine Shipping Assessment" noted both the sparse nature of aids to navigation in the United States Arctic as well as the absence of vessel routing measures in the Bering Strait. According to the study, significant increases in shipping are not expected in the near term. However, the U.S. Coast Guard desires to begin its study process so that essential safeguards are in place in advance of any future shipping increase.

The Coast Guard has identified a potential safety enhancement by increasing predictability of vessel traffic patterns in this area with an established vessel routing system. When vessels follow predictable and charted routing measures such as a TSS, congestion may be reduced, and mariners may be better able to predict where vessel interactions may occur and act accordingly.

This study will assess whether the creation of a vessel routing system is advisable to increase the predictability of vessel movements, which may decrease the potential for collisions, oil spills, and other events that could threaten the marine environment.

There are numerous interested stakeholders with concerns regarding this region, and the U.S. Coast Guard is committed to ensuring that all viewpoints are obtained and considered prior to moving forward with any vessel routing measure implementation.

Timeline, Study Area, and Process of this PARS: The Seventeenth Coast Guard District will conduct this PARS. The study will begin immediately upon publication of this notice and should take at least 24 months to complete.

The study area is described as an area bounded by a line connecting the following geographic positions:

- 62°30' N, 173°00' W;
- 62°30' N, 167°30' W;
- 67°30' N, 167°30' W;
- 67°30' N, 168°58'37" W, thence

following the Russian Federation/ United States maritime boundary line to position

- 63°40' N, 173°00' W, thence to the first geographical position.

As part of this study, we will analyze vessel traffic density, agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate the status quo (no routing measures) and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

### Possible Scope of the Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will help us identify any problems and appropriate solutions. The study may recommend that we—

- Maintain current vessel routing measures, if any;
- Establish a Traffic Separation Scheme (TSS);
- Create one or more precautionary areas;
- Create one or more inshore traffic zones;
- Create deep-draft routes;
- Establish area(s) to be avoided;
- Establish, disestablish, or modify anchorage grounds;
- Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water; and
- Identify any other appropriate ships' routing measures to be used.

### Questions

To help us conduct the port access route study, we request information that will help answer the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer and follow the

instructions under "Public Participation and Request for Comments" above.

1. What navigational hazards do vessels operating in the study areas face? Please describe.
2. Are there strains on safe navigation in the Bering Strait, such as increasing traffic density? If so, please describe.
3. What are the benefits and drawbacks to establishing new routing measures? Please describe.
4. What impacts, both positive and negative, would new routing measures have on the study area?
5. What costs and benefits are associated with the potential study recommendations listed above? What measures do you think are most cost effective?

This document is issued under authority of 33 U.S.C. 1223(c) and 5 U.S.C. 552.

Dated: September 24, 2010.

**Christopher C. Colvin,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2007-1027; FRL-9223-3]

### Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Definitions; Construction Permit Program; Regulation 3

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

**ACTION:** Proposed Rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 20, 2003 and April 12, 2004. The intended effect of this proposal is to approve those portions of the revisions to Colorado's Regulation 3 that place restrictions on increment consumption, add innovative control technology as an alternative to BACT requirements and make other changes as described in more detail below. In addition, EPA proposes to disapprove those portions of the rule revisions that EPA determined are inconsistent with the Clean Air Act (CAA), including provisions relating to pollution control projects. This action is being taken under section 110 of the CAA.

**DATES:** Comments must be received on or before December 8, 2010.