we do discuss the effects of this rule elsewhere in this preamble.

7. 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.

8. 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.

9. 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.

10. 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.

11. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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 parts 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:


2. Add § 165.T09–0904 to read as follows:

§ 165.T09–0904 Safety Zone; Bridge Demolition Project, Indiana Harbor Canal, East Chicago, Indiana.

(a) Location. The safety zone will encompass all waters of the Indiana Harbor Canal in the vicinity of the Cline Avenue Bridge at approximate position 41°39′4.3″ N and 87°27′54.3″ W (NAD 83).

(b) Effective and Enforcement Period. This rule is effective between 6:00 a.m. until 9:00 a.m. on December 1, 2012. This rule will be enforced between 6:00 a.m. until 9:00 a.m. on December 1, 2012.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port, Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: November 15, 2012.

M.W. Sibley,
Captain, U. S. Coast Guard, Captain of the Port, Sector Lake Michigan.

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BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 20

RIN 2900–AO43

Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans’ Appeals; Repeal of Prior Rule Change

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; confirmation of effective date and addition of applicability date.

SUMMARY: The Department of Veterans Affairs (VA) published a direct final rule amending its hearing regulations to repeal a prior amendment that specified that the provisions regarding hearings before the Agency of Original Jurisdiction (AOJ) do not apply to hearings before the Board of Veterans’ Appeals (Board). VA received no significant adverse comment concerning this rule. This document confirms that the direct final rule became effective on June 18, 2012. Additionally, in the preamble of the direct final rule, VA did not provide an applicability date. This document provides an applicability date.

DATES: Effective Date: This final rule is effective June 18, 2012. Applicability Date: This final rule shall apply to decisions issued by the Board on or after August 23, 2011.

FOR FURTHER INFORMATION CONTACT: Laura H. Eskenazi, Principal Deputy Vice Chairman, Board of Veterans’ Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue NW,
comment. NOVA criticized the direct final rule procedure because it was “conditional rather than mandatory.” As we anticipated when we published the direct final rule, no significant adverse comment was received by VA, and the direct final rule became effective on June 18, 2012. Accordingly, NOVA’s concern about the action being conditional is moot.

NOVA also urged that the “repeal of [the amendments made by RIN 2900–A006] be retroactive to August 23, 2011.” In the direct final rule, we stated that we were “repealing” those amendments but provided only an effective date—June 18, 2012. We did not provide an applicability date. Accordingly, in this document we have added, in the DATES section above, an Applicability Date paragraph, stating, “This final rule shall apply to decisions issued by the Board on or after August 23, 2011.”

Finally, NOVA also encouraged VA to “clarify that any veteran who suffered any harm as a result of the invalid rule is now entitled to obtain relief.” In this regard, appellants have a statutory right to appeal a Board decision to the Veterans Court within 120 days after the date on which the appellant is notified of the Board’s decision. See 38 U.S.C. 7266(a). Additionally, VA regulations permit appellants whose claims have been denied by the Board to file with the Board at any time a motion for reconsideration of the decision. See 38 CFR 20.1001. If the Chairman of the Board denies a motion for reconsideration, that denial and the underlying Board decision may be appealed to the Veterans Court if a timely appeal was previously filed with the Veterans Court with respect to that underlying Board decision. See Mayer v. Brown, 37 F.3d 618, 620 (Fed. Cir. 1994), overruled in part by Bailey v. West, 160 F.3d 1360 (Fed. Cir. 1998) (en banc). Also, the Board’s decision may be appealed to the Veterans Court if a timely appeal was previously filed with the Veterans Court with respect to that underlying Board decision. See Mayer v. Brown, 37 F.3d 618, 620 (Fed. Cir. 1994), overruled in part by Bailey v. West, 160 F.3d 1360 (Fed. Cir. 1998) (en banc). Also, the Board’s decision may be appealed to the Veterans Court if a timely appeal was previously filed with the Veterans Court with respect to that underlying Board decision.

EPA determined that RIN 2900–A006 should have followed the notice-and-comment procedure of 5 U.S.C. 553(b) and (c) of the Administrative Procedure Act and published the direct final rule to return the regulations to the language in effect before August 23, 2011. The direct final rule provided a 30-day comment period that ended on May 18, 2012. No significant adverse comment was received. VA received only one comment on May 17, 2012, from the National Organization of Veterans’ Advocates, Inc. (NOVA). In pertinent part, NOVA stated, “[t]he full, retroactive repeal of the invalid amendments made by RIN 2900–A006 should move forward regardless of whether the ‘VA receives a significant adverse comment by May 18, 2012.’ * * * VA has a responsibility to repeal the rule as quickly as possible. Doing so will help ensure that any veterans harmed by the invalid rule will be able to obtain appropriate relief.”

Accordingly, under the direct final rule procedures that were described in RIN 2900–A043, the direct final rule became effective on June 18, 2012, because no significant adverse comment was received in the comment period.

We take this opportunity to address three points made by NOVA in its