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.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 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:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 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.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.

[FR Doc. 2012–28693 Filed 11–26–12; 8:45 am]

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.,

Washington, DC 20420, (202) 632–4603. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 18, 2012, VA published in the **Federal Register**, 77 FR 23128, a direct final rule to amend, in 38 CFR part 3, § 3.103(a) and (c)(1), and, in 38 CFR part 20, § 20.706 and Appendix A to repeal amendments made by RIN 2900–AO06, ''Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Clarification,'' a final rule that had been published in the **Federal Register** on August 23, 2011. As discussed in the preamble to the direct final rule, RIN 2900–AO06 altered language upon which the United States Court of Appeals for Veterans Claims (Veterans Court) relied in *Bryant* v. *Shinseki,* 23 Vet. App. 488 (2010), which applied the provisions of § 3.103(c)(2) to a Board hearing. The *Bryant* Court held that the provisions of § 3.103(c)(2) require a ''Board hearing officer'' to ''fully explain the issues still outstanding that are relevant and material to substantiating the claim'' and to ''suggest that a claimant submit evidence on an issue material to substantiating the claim when the record is missing any evidence on that issue or when the testimony at the hearing raises an issue for which there is no evidence in the record.'' *Id.* at 496–97.

VA determined that RIN 2900–AO06 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–AO06] 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–AO43, the direct final rule became effective on June 18, 2012, because no significant adverse comment was received within the comment period.

We take this opportunity to address three points made by NOVA in its 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–AO06 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 the appellant filed the motion for reconsideration not later than 120 days after being notified of the Board's decision and then appeals to the Veterans Court not later than 120 days after reconsideration is denied. *Rosler* v. *Derwinski,* 1 Vet. App. 241, 249 (1991); *see also Linville* v. *West,* 165 F.3d 1382, 1385–86 (Fed. Cir. 1999). Additionally, the 120-day period to appeal a Board decision to the Veterans Court is subject to the doctrine of equitable tolling within certain parameters. *See Bove* v. *Shinseki,* 25 Vet. App. 136, 140 (2011). These procedures provide adequate avenues of relief to any claimants who may have been adversely affected by the repealed rule.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, Department of Veterans Affairs, approved this document on November 20, 2012, for publication.

Dated: November 20, 2012.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–28621 Filed 11–26–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0809; FRL–9754–5]

Approval and Promulgation of Implementation Plans; Florida; Section 128 and 110(a)(2)(E)(ii) and (G) Infrastructure Requirements for the 1997 8-hour Ozone National Ambient Air Quality Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, correction.

SUMMARY: EPA published in the **Federal Register** of July 30, 2012, a final rule approving portions of the State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on May 24, 2012, as demonstrating that the State met the SIP requirements of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). In that final rule, EPA approved Florida's infrastructure submission, provided to EPA on May 24, 2012, which included state statues to be incorporated into the SIP to address infrastructure requirements regarding state boards and emergency powers. While EPA discussed in the final rulemaking that it was taking action to approve certain state statues into the Florida SIP to address the state board requirements and emergency powers, EPA inadvertently did not list these state statues in the regulatory text of the July 30, 2012, final rule. Accordingly, this rulemaking corrects that inadvertent regulatory text omission.