

Dated: June 30, 2003.

Lorne W. Thomas,

*Commander, Coast Guard, Captain of the Port
Cleveland.*

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01-03-066]

RIN 1625-AE84

Regulated Navigation Area; Arthur Kill, NY and NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a Regulated Navigation Area (RNA) to impose restrictions on vessels transiting to the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach of the Arthur Kill during U.S. Army Corps of Engineers dredging operations in those areas. This action is necessary to provide for the safety of life and property on navigable waters during Army Corps of Engineers and Port Authority of New York/New Jersey dredging operations that impinge upon the navigable portion of the channel and require the temporary relocation of navigational aids. This action is intended to reduce the risks of collisions, groundings and other navigational mishaps.

DATES: Comments and related material must reach the Coast Guard on or before August 15, 2003.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01-03-066), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York 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 room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354-4012.

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 (CGD01-03-066), 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch 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 Arthur Kill Channel is the proposed area to be designated as an RNA. This channel is located in the waters between Elizabeth, NJ and Staten Island, NY. The proposed RNA would enhance vessel safety during the extensive channel-deepening project being undertaken by the U.S. Army Corps of Engineers, which involves dredging and blasting in these areas. Current channel depths restrict the full economy of existing and future generations of deep draft vessels. Tankships arriving in the port with drafts approaching the 45 foot controlling depths of Ambrose and Anchorage Channels must lighten some of their cargo to barges in the deep New York Harbor Anchorage Grounds in order to safely transit the 35 foot Arthur Kill. This results in substantial lightening and delay costs.

Container vessels cannot lighten in the Anchorage Grounds and therefore must load to less than full drafts. This project, which is expected to last approximately five years, will deepen the existing 35-foot channels to 41 feet to accommodate deeper draft vessels. The dredging areas will continue to be available for use by the general public.

Proposed restrictions on vessel transits during this project are as

follows: (1) No vessel shall enter or transit any work area where drill barges and/or dredges are located without permission of Vessel Traffic Service New York (VTSNY). One-way traffic will be maintained during this project in the active work areas. Permission to transit the work area will normally not be given during blasting operations.

(2) Each vessel transiting in the vicinity of the work areas, where drill barges and/or dredges are located, is required to do so at "no wake" speed.

(3) No vessel shall enter the RNA when they are advised by the drilling barge or VTSNY that a misfire or hangfire has occurred. Vessels already underway in the RNA shall proceed to clear the impacted area immediately.

(4) Vessel Movement Reporting System users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area.

(5) Vessel Movement Reporting System users transiting with the prevailing current (as measured from the Bergen Point current station) are regarded as the stand-on vessel.

(6) Prior to entering the RNA, the master, pilot or operator of each Vessel Movement Reporting System user shall ensure that they have sufficient propulsion and directional control to safely navigate the area under the prevailing conditions, and shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the RNA.

(7) Waiver. The Captain of the Port New York may, upon 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 24 hours before the intended operation and must state the need and describe the proposal.

(8) Tugs with tows includes a tug with a vessel or barge in tow, alongside, or being pushed.

(9) Tug requirements. All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, excluding tugs with tows, require a minimum of two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require a minimum of three assist tugs.

(10) Tidal current restrictions. Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water, as measured from the Bergen Point current station.

(11) Astern tows. Hawser tows are not permitted unless an assist tug accompanies the tow.

(12) When sustained winds are greater than 20 knots, as measured at the Bayonne Bridge meteorological sensor, vessels are prohibited from backing out of the Howland Hook Marine Terminal.

(13) Sustained winds from 20 to 34 knots. In sustained winds from 20 to 34 knots: (i) Cargo ships and tankers in ballast may not transit the RNA; (ii) tugs pushing or towing alongside tank barges 350 feet in length, or greater, in light condition, require an assist tug in the RNA.

(14) Sustained winds greater than 34 knots. In sustained winds greater than 34 knots, vessels 300 gross tons or greater and all tugs with tows are prohibited from transiting the RNA.

(15) When visibility is less than one nautical mile the entire work zone is closed to vessels over 350 feet in length and all tugs with tows.

(16) The Vessel Traffic Service New York Director may impose additional requirements through VTS measures, as per 33 CFR 161.11, when the dredge is working in the most restricted areas of the waterway.

This proposed rulemaking is needed to reduce the risks of collisions, groundings, and other navigational mishaps associated with this project. These proposed restrictions are similar to those currently in place to the east of the proposed RNA for the ongoing Kill Van Kull RNA codified at 33 CFR 165.165. They were originally instituted during 1991–1992 when dredging was last conducted in this vicinity. They were instituted at that time in response to three groundings that resulted in one oil spill and one channel blockage.

Public notifications for specific dredging dates and dredging areas within the RNA will be made prior to the commencement of dredging via the Local Notice to Mariners, marine information and facsimile broadcasts, at New York Harbor Operations Committee meetings and on the internet at: <http://www.harborops.com>.

The proposed regulation would become effective on Monday, September 1, 2003.

Discussion of Proposed Rule

The proposed RNA encompasses all waters of the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach in the Arthur Kill. This proposed rule is necessary to safeguard marine traffic from the dangers of the dredging and blasting work proposed in the project area.

Regulatory Evaluation

This proposed 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the following reasons: Vessels will be allowed to transit work areas where dredges and/or drill barges are located unless blasting is to be conducted; delays resulting from blasting are expected to last no longer than 15 minutes and occur less than 7 times daily in any one area; there are no restrictions on vessel traffic in the RNA in areas where there are no dredges or drill barges; the Port Authority of New York/New Jersey is working with the Army Corps of Engineers on this project to ensure future generations of deep draft vessels are able to use the Port of NY/NJ; it will reduce substantial costs associated with lightering operations currently required by vessels unable to transit the harbor fully loaded, and advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information and facsimile broadcast, at New York Harbor Operations Committee meetings and on the internet at <http://www.harborops.com>.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would 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: The owners or operators of vessels intending to transit a portion of the North of Shooters Island Reach, Elizabethport Reach, or Gulfport Reach of the Arthur Kill during the time this RNA is effective.

This RNA would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels will be allowed to transit work areas where dredges and/or drill barges are located unless blasting is to be conducted; delays resulting from blasting are expected to last no longer than 15 minutes and occur less than 7 times daily in any one area; there are no restrictions on vessel traffic in the RNA in areas where there are no dredges or drill barges; the Port Authority of New York/New Jersey is working with the Army Corps of Engineers on this project to ensure future generations of deep draft vessels are able to use the Port of NY/NJ; and it will reduce substantial costs associated with lightering operations currently required by vessels unable to transit the harbor fully loaded. Before the effective date we will ensure wide dissemination of maritime advisories widely available to users of the Arthur Kill by the Local Notice to Mariners, marine information and facsimile broadcast, at New York Harbor Operations Committee meetings, and on the internet at <http://www.harborops.com>.

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 (Pub. L. 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

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

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 proposed rule under that Order and have determined that it does not have implications for federalism.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

We have analyzed this proposed 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.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes a Regulated Navigation Area. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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 § 165.171 to read as follows:

§ 165.171 Regulated Navigation Area; Arthur Kill, NY and NJ.

(a) *Regulated Navigation Area.* The following area is a Regulated Navigation Area: All waters of the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach in the Arthur Kill.

(b) *Enforcement period.* This section will be enforced from 8 a.m. on Monday, September 1, 2003 until the dredging project is completed.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise

commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) No vessel shall enter or transit any work area where drill barges and/or dredges are located without permission of Vessel Traffic Service New York (VTSNY). One-way traffic will be maintained during this project in the active work areas. Permission to transit the work area will normally not be given during blasting operations.

(4) Each vessel transiting in the vicinity of the work areas, where drill barges and/or dredges are located, is required to do so at “no wake” speed.

(5) No vessel shall enter the RNA when they are advised by the drilling barge or VTSNY that a misfire or hangfire has occurred. Vessels already underway in the RNA shall proceed to clear the impacted area immediately.

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(7) Vessel Movement Reporting System users transiting with the prevailing current (as measured from the Bergen Point current station) are regarded as the stand-on vessel.

(8) Prior to entering the RNA, the master, pilot or operator of each Vessel Movement Reporting System user shall ensure that they have sufficient propulsion and directional control to safely navigate the area under the prevailing conditions, and shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the RNA.

(9) *Waiver.* The Captain of the Port New York may, upon 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 24 hours before the intended operation and must state the need and describe the proposal.

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(11) *Tug requirements.* All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, excluding tugs with tows, require a minimum of two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require a minimum of three assist tugs.

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hour before or after slack water, as measured from the Bergen Point current station.

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(14) When sustained winds are greater than 20 knots, as measured at the Bayonne Bridge meteorological sensor, vessels are prohibited from backing out of the Howland Hook Marine Terminal.

(15) *Sustained winds from 20 to 34 knots*. In sustained winds from 20 to 34 knots:

(i) Cargo ships and tankers in ballast may not transit the RNA;

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(17) When visibility is less than one nautical mile the entire work zone is closed to vessels over 350 feet in length and all tugs with tows.

(18) The Vessel Traffic Service New York Director may impose additional requirements through VTS measures, as per 33 CFR 161.11, when the dredge is working in the most restricted areas of the waterway.

Dated: July 9, 2003.

John L. Grenier,

*Captain, Coast Guard, Acting Commander,
First Coast Guard District.*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY61-259, FRL-7528-5]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to New York Codes, Rules and Regulations, Part 228, "Surface Coating Processes." This SIP revision consists of a control measure

needed to meet the shortfall emissions reduction identified by EPA in New York's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve a control strategy required by New York's SIP which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: Comments must be received on or before August 15, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Electronic comments could be sent either to Werner.Raymond@epa.gov or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments.

A copy of the New York's submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381 or Wieber.Kirk@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Is Required by the Clean Air Act and How Does It Apply to New York?

Section 182 of the Clean Air Act (Act) specifies the required State Implementation Plan (SIP) submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to EPA by the states. The specific requirements vary depending upon the severity of the ozone problem. The New York—Northern New Jersey—Long Island area is classified as a severe ozone nonattainment area. Under section 182, severe ozone nonattainment areas were

required to submit demonstrations of how they would attain the 1-hour standard. On December 16, 1999 (64 FR 70364), EPA proposed approval of New York's 1-hour ozone attainment demonstration SIP for the New York—Northern New Jersey—Long Island nonattainment area. In that rulemaking, EPA identified an emission reduction shortfall associated with New York's 1-hour ozone attainment demonstration SIP, and required New York to address the shortfall. In a related matter, the Ozone Transport Commission (OTC) developed six model rules which provided control measures for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in developing their own regulations to achieve additional emission reductions to close emission shortfalls.

On February 4, 2002 (67 FR 5170), EPA approved New York's 1-hour ozone attainment demonstration SIP. This approval included an enforceable commitment submitted by New York to adopt additional control measures to close the shortfall identified by EPA for attainment of the 1-hour ozone standard.

II. What Was Included in New York's Submittal?

On April 30, 2003, Carl Johnson, Deputy Commissioner, New York State Department of Environmental Conservation (NYSDEC), submitted to EPA a revision to the SIP which included state-proposed revisions to NYCRR, Part 228, "Surface Coating Processes." The proposed revisions to Part 228 will provide volatile organic compound (VOC) emission reductions to address, in part, the shortfall identified by EPA. New York used the OTC model rule as a guideline to develop Part 228.

A. What Do the Revisions to Part 228, "Surface Coating Processes" Consist Of?

The majority of the proposed revisions to part 228 pertain to mobile equipment repair and refinishing (MERR) requirements, including VOC content limits for several MERR coating lines. The proposed revisions to part 228 establish that, beginning January 1, 2005, a person may not apply to mobile equipment or mobile equipment components any automotive pretreatment primer, automotive primer-surfacer, automotive primer-sealer, automotive topcoat or automotive specialty coatings that contain VOCs in excess of the VOC