

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.

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

(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.

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

(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.

(12) *Tidal current restrictions.* Vessels 700 feet in length, or greater, are restricted to movements within one