

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[CGD08-06-023]

RIN 1625-AA11

Regulated Navigation Area; Atchafalaya River, Berwick Bay, Berwick Bay, LA**AGENCY:** Coast Guard, Department of Homeland Security (DHS).**ACTION:** Final rule.

SUMMARY: The Coast Guard is amending its regulations pertaining to the Atchafalaya River, Berwick Bay, Berwick Bay, LA, navigation area. Coast Guard Vessel Traffic Service (VTS) Berwick Bay determined that the Southern Pacific Railroad (SPRR) Bridge visual displays were no longer necessary due to updated VTS technologies and procedures that actively inform towing vessels that the rules of 33 CFR 165.811 are in effect at the time of entry into the VTS. This action relieves both the owner of the SPRR Bridge and the Coast Guard from maintaining antiquated visual displays and related equipment.

DATES: This final rule is effective June 18, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD08-06-023] and are available for inspection or copying at U.S. Coast Guard District Eight, 500 Poydras Street, New Orleans, Louisiana, 70130-3396 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Edgardo Estrada, Eighth Coast Guard District's Waterways Branch, at telephone 504-671-2326. Please cite [CGD08-06-023].

SUPPLEMENTARY INFORMATION:**Regulatory History**

On December 27, 2006, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Atchafalaya River, Berwick Bay, Berwick Bay, LA" in the **Federal Register** (71 FR 77657). We received no letters commenting on the proposed rule. No public meeting was requested and none was held.

Background and Purpose

BNSF Railway Company, the owner of the Southern Pacific Railroad (SPRR) Bridge, requested a change to the visual display requirements for the SPRR

Bridge set forth in 33 CFR 165.811. In September 2005, the visual displays atop the SPRR Bridge were destroyed by Hurricane Rita and have not been restored. Prior to their destruction, the visual displays consisted of two vertically arranged red balls by day and two vertically arranged flashing white lights by night. The displays were maintained by the bridge owner and were activated upon direction by Coast Guard Vessel Traffic Service (VTS) Berwick Bay during high water periods as specified in 33 CFR 165.811. Prior to the current implementation of VTS Berwick Bay, the use of visual displays on the SPRR Bridge served as the primary means of advising towing vessels that the provisions of 33 CFR 165.811 were in effect, or were anticipated to be placed into effect, in order to reduce the risk of mishaps involving towing vessels and the local bridges crossing the waterway. The destruction of the displays by Hurricane Rita and the subsequent request by BNSF Railway Company for their discontinuance prompted discussion within the Coast Guard as to the necessity of the visual displays. Coast Guard VTS Berwick Bay concluded that the visual displays are antiquated and no longer serve as a primary means to advise towing vessels that the requirements of 33 CFR 165.811 are in effect. VTS Berwick Bay now directly advises towing vessels as to which navigation rules are in effect at the time of the vessel entry into the VTS regulated navigation area.

Regulatory Evaluation

This final 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This amended rule eliminates existing visual display requirements from a list of notice requirements under 33 CFR 165.811(f) which have been superseded by improved procedures for notification. This amended rule neither imposes any additional costs to the public nor eliminates significant benefits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this 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.

This amended rule is neutral to all business entities as it merely changes the means of notification by which towing vessel operators within the regulated navigation area are provided notice that the provisions of 33 CFR 165.811 are or are anticipated to be in effect. Henceforth, all operators will be notified by VTS Berwick Bay rather than by visual displays. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls 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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will 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 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 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.

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.

Energy Effects

We have analyzed this 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this amended rule under Commandant Instruction M16475.ID, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" is not required for 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 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, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.811 [Amended]

■ 2. In § 165.811, remove paragraph (f)(4) and the note located at the end of the section.

Dated: May 2, 2007.

J.R. Whitehead,

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

[FR Doc. E7–9497 Filed 5–16–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more