

(2) Involves any United States vessel wherever such casualty or accident occurs; or

(3) With respect to a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.

(b) The term "marine casualty or accident" applies to events caused by or involving a vessel and includes, but is not limited to, the following:

(1) Any fall overboard, injury, or loss of life of any person.

(2) Any occurrence involving a vessel that results in—

- (i) Grounding;
- (ii) Stranding;
- (iii) Foundering;
- (iv) Flooding;
- (v) Collision;
- (vi) Allision;
- (vii) Explosion;
- (viii) Fire;

(ix) Reduction or loss of a vessel's electrical power, propulsion, or steering capabilities;

(x) Failures or occurrences, regardless of cause, which impair any aspect of a vessel's operation, components, or cargo;

(xi) Any other circumstance that might affect or impair a vessel's seaworthiness, efficiency, or fitness for service or route; or

(xii) Any incident involving significant harm to the environment.

(3) Any occurrences of injury or loss of life to any person while diving from a vessel and using underwater breathing apparatus.

(4) Any incident described in § 4.05–1(a).

■ 9. Add § 4.03–60 to read as follows:

**§ 4.03–60 Noxious liquid substance (NLS).**

*Noxious liquid substance (NLS)* means—

(a) Each substance listed in 33 CFR 151.47 or 151.49;

(b) Each substance having an "A," "B," "C," or "D" beside its name in the column headed "IMO Annex II pollution category" in table 1 of part 153 of this chapter; and

(c) Each substance that is identified as an NLS in a written permission issued under § 153.900(d) of this chapter.

■ 10. Add § 4.03–65 to read as follows:

**§ 4.03–65 Significant harm to the environment.**

*Significant harm to the environment* means—

(a) In the navigable waters of the United States, a discharge of oil as set

forth in 40 CFR 110.3 or a discharge of hazardous substances in quantities equal to or exceeding, in any 24-hour period, the reportable quantity determined in 40 CFR part 117;

(b) In other waters subject to the jurisdiction of the United States, including the EEZ—

(1) A discharge of oil in excess of the quantities or instantaneous rate permitted in 33 CFR 151.10 or 151.13 during operation of the ship; or

(2) A discharge of noxious liquid substances in bulk in violation of §§ 153.1126 or 153.1128 of this chapter during the operation of the ship; and

(c) In waters subject to the jurisdiction of the United States, including the EEZ, a probable discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

- (1) Ship location and proximity to land or other navigational hazards;
- (2) Weather;
- (3) Tide current;
- (4) Sea state;
- (5) Traffic density;
- (6) The nature of damage to the vessel; and
- (7) Failure or breakdown aboard the vessel, its machinery, or equipment.

■ 11. Add § 4.03–70 to read as follows:

**§ 4.03–70 Tank vessel.**

*Tank vessel* means a vessel that is constructed or adapted to carry, or that carries, oil, hazardous substances, marine pollutants, or noxious liquid substances, in bulk as cargo or cargo residue.

**§ 4.05–1 [Amended]**

■ 12. In § 4.05–1, in paragraph (a)(2), remove the number "(7)" and add, in its place, the number "(8)"; and add paragraphs (a)(8) and (c) to read as follows:

**§ 4.05–1 Notice of marine casualty.**

(a) \* \* \*

(8) An occurrence involving significant harm to the environment as defined in § 4.03–65.

\* \* \* \* \*

(c) Except as otherwise required under this subpart, if the marine casualty exclusively involves an occurrence or occurrences described by paragraph (a)(8) of this section, a report made pursuant to 33 CFR 153.203, 40 CFR 117.21, or 40 CFR 302.6 satisfies the immediate notification requirement of this section.

■ 13. Add § 4.05–2 to read as follows:

**§ 4.05–2 Incidents involving foreign tank vessels.**

(a) *Within the navigable waters of the United States, its territories, or possessions.* The marine casualty reporting and investigation criteria of this part apply to foreign tank vessels operating on the navigable waters of the United States, its territories, or possessions. A written marine casualty report must be submitted under § 4.05–10 of this chapter.

(b) *Outside the U.S. navigable waters and within the Exclusive Economic Zone (EEZ).* The owner, agent, master, operator, or person in charge of a foreign tank vessel involved in a marine casualty must report under procedures detailed in 33 CFR 151.15, immediately after addressing resultant safety concerns, whenever the marine casualty involves, or results in—

(1) Material damage affecting the seaworthiness or efficiency of the vessel; or

(2) An occurrence involving significant harm to the environment as a result of a discharge, or probable discharge, resulting from damage to the vessel or its equipment. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

- (i) Ship location and proximity to land or other navigational hazards;
- (ii) Weather;
- (iii) Tide current;
- (iv) Sea state;
- (v) Traffic density;
- (vi) The nature of damage to the vessel; and
- (vii) Failure or breakdown aboard the vessel, its machinery, or equipment.

Dated: December 8, 2005.

**Thomas H. Collins,**

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 05–24125 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD01–05–106]

RIN 1625–AA11

**Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary regulated

navigation area from the entrance of East Rockaway Inlet to the Atlantic Beach Bridge, Nassau County, New York. This regulated navigation area restricts passage of commercial vessels carrying petroleum products with a loaded draft in excess of five feet. Significant shoaling in this area has reduced the depths of the navigable channel and has increased the risk of vessels with drafts of greater than five feet carrying petroleum products as cargo grounding in the channel, and the potential for a significant oil spill.

**DATES:** This rule is effective from 6 a.m. on November 29, 2005 until 11:59 p.m., on May 31, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01-05-106 and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant A. Logman, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468-4429.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the immediate need for the protection of the maritime public, it is impracticable to publish a NPRM in advance. Thus, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to public interest since immediate action is needed to prevent vessels carrying petroleum products as cargo with a loaded draft of greater than five feet from transiting the area so as to avoid the potential hazards associated with a grounding of a vessel.

East Rockaway Inlet has experienced significant shoaling causing the channel to migrate towards the west. Water depths in the federal navigation channel have been reduced in some areas to as low as 5 feet. This channel was last dredged by the Army Corps of Engineers during the winter of 2004/2005. However, the shoaling in this area has reduced depths to a point where transit for vessels drawing greater than five feet increases the immediate risk of grounding. Therefore, the Coast Guard is relocating the channel buoys to the west

to account for channel migration. The delay inherent in the NPRM process is contrary to the public interest and impracticable, as urgent action is needed to minimize the potential danger posed by the possibility of groundings of tankers and the potential resultant oil spills in and around this regulated navigation area. The effective period of this regulation will provide the Coast Guard with the necessary time to conduct notice and comment rulemaking in order to establish a permanent regulated navigation area in East Rockaway Inlet.

##### **Background and Purpose**

East Rockaway Inlet is on the South Shore of Long Island, in Nassau County, New York. The Inlet has experienced significant shoaling since dredging was completed in the late winter of 2004/2005, causing the channel to migrate towards the west. Water depths in the federal navigation channel have been reduced in some areas to as low as 5 feet. This channel was last dredged by the Army Corps of Engineers during the winter of 2004/2005. The channel buoys are being relocated to the west to account for channel migration. East Rockaway Inlet is frequented by small coastal tankers and tugs towing oil barges supplying two facilities: Sprague Energy Oceanside, located in Oceanside, Long Island, New York, a supplier of home heating oil for Long Island, New York, and Keyspan E.S. Barrett, an electrical power generation facility, located in Island Park, Long Island, New York. The shoaling in this area has reduced depths to a point where transit for vessels drawing greater than five feet increases the risk of immediate grounding, and the potential for a significant oil spill. Similar shoaling led to the grounding in late 2003 and in 2004 of small coastal tankers carrying home heating oil.

##### **Discussion of Rule**

This rule will provide for the safety of vessel traffic in and around East Rockaway Inlet, Long Island, New York. This regulation establishes a temporary regulated navigation area (RNA) on the navigable waters of the East Rockaway Inlet in an area bounded by lines drawn from the approximate position of the Silver Point breakwater buoy (LLN 31500) at 40°34'56" N, 073°45'19" W, running north to a point of land on the northwest side of the inlet at position 40°35'28" N, 073°46'12" W, thence easterly along the shore to the east side of the Atlantic Beach Bridge, State Route 878, over East Rockaway Inlet, thence across said bridge to the south side of East Rockaway Inlet, thence

westerly along the shore and across the water to the beginning. The rule described herein prohibits the transit of vessels carrying petroleum products as cargo with a loaded draft greater than five feet through the RNA. Operators of vessels carrying petroleum products as cargo with a loaded draft greater than five feet may submit a request to transit the regulated navigation area. The request must consist of a voyage plan that identifies acceptable parameters for transiting the RNA to the Captain of the Port, Long Island Sound. Parameters addressed shall include: Weather conditions for transit, restrictions due to state of tide, the loaded draft of the vessel, and minimum under keel clearance. The required general voyage plan must be submitted at least 48 hours prior to the vessel's first transit through the RNA. Vessels may only transit the RNA after receiving approval of the submitted voyage plan. This request and voyage plan need only be submitted one time for vessels operating in accordance with the approved plan. Vessel operators must submit any modifications, and receive approval thereof, from the Captain of the Port, Long Island Sound of any modifications to the approved voyage plan prior to transiting the RNA. Modifications to approved plans must be submitted to the COTP LIS at least 24 hours prior to the transit to which the modification applies. This RNA is in effect from 6 a.m. on November 29, 2005 until 11:59 p.m. on May 31, 2006.

Any violation of the RNA described herein, is punishable by, among others, civil and criminal penalties, *in rem* liability against the offending vessel, and license sanctions.

The Captain of the Port Long Island Sound will notify the maritime community of the requirements of this regulated navigation area via broadcast notifications and notifications in the local notice to mariners.

##### **Regulatory Evaluation**

This 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 rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation

may have some impact on the public, but the potential impact will be minimized for the following reasons: The regulated navigation area limits only vessels carrying petroleum products as cargo with a loaded draft of greater than five feet; operators of vessels with a loaded draft of greater than five feet may request permission to transit the regulated navigation area from the Captain of the Port, Long Island Sound. Recreational and other maritime traffic is not prohibited from transiting this area.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels carrying petroleum products intending to transit or anchor in those portions of the East Rockaway Inlet covered by the regulated navigation area; and Sprague Energy Oceanside, located in Oceanside, Long Island, New York, a supplier of home heating oil, and Keyspan E.S. Barrett, an electrical power generation facility, located in Island Park, Long Island, New York, which receive the vessels affected by this regulated navigation area. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will

affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound, at (203) 468–4429.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### **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 affect 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 will not concern 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 will 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### **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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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

The Coast Guard analyzed this rule under Commandant Instruction M16475.1D, 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. An Environmental Analysis Checklist and Categorical Exclusion Determination are available for review at the location listed 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 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 and 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. From 6 a.m. on November 29, 2005 until 11:59 p.m. on May 31, 2006, add temporary § 165.T01–106 to read as follows:

#### § 165.T01–106 Regulated Navigation Area, East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, New York.

(a) *Location.* The following area is established as a Regulated Navigation Area: All waters of East Rockaway Inlet in an area bounded by lines drawn from the approximate position of the Silver Point breakwater buoy (LLN 31500) at 40°34'56" N, 073°45'19" W, running north to a point of land on the

northwest side of the inlet at position 40°35'28" N, 073°46'12" W, thence easterly along the shore to the east side of the Atlantic Beach Bridge, State Route 878, over East Rockaway Inlet, thence across the bridge to the south side of East Rockaway Inlet, thence westerly along the shore and across the water to the beginning.

(b) *Regulations.* (1) Vessels carrying petroleum products as cargo, with a loaded draft greater than five feet, are prohibited from transiting within the regulated navigation area.

(2) Operators of vessels carrying petroleum products as cargo with a loaded draft greater than five feet must submit a request to transit the regulated navigation area to the Captain of the Port, Long Island Sound, at least 48 hours prior to transiting the area. Requests to transit the area shall consist of a general voyage plan identifying parameters for transit, to include the following: Weather conditions for transit, restrictions due to state of tide, the loaded draft of the vessel, and minimum acceptable under keel clearance. Once approved, vessels may transit the area in accordance with the approved voyage plan. Any modification or deviation from approved voyage plans must be submitted to the Captain of the Port, Long Island Sound at least 24 hours prior to the transit to which the modification applies.

(c) *Effective period.* This rule is effective from 6 a.m. on November 29, 2005 until 11:59 p.m. on May 31, 2006.

Dated: November 28, 2005.

**David P. Pekoske,**

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

[FR Doc. 05–24135 Filed 12–15–05; 8:45 am]

**BILLING CODE 4910–15–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 60

#### Standards of Performance for New Stationary Sources

#### CFR Correction

In title 40 of the Code of Federal Regulations, Part 60 (§ 60.1 to End), revised as of July 1, 2005, on page 167, in § 60.41c, correct the definition of “Annual capacity factor” to read as follows:

#### § 60.41c Definitions.

\* \* \* \* \*

*Annual capacity factor* means the ratio between the actual heat input to a

steam generating unit from an individual fuel or combination of fuels during a period of 12 consecutive calendar months and the potential heat input to the steam generating unit from all fuels had the steam generating unit been operated for 8,760 hours during that 12-month period at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility during a period of 12 consecutive calendar months.

\* \* \* \* \*

[FR Doc. 05–55521 Filed 12–15–05; 8:45 am]

**BILLING CODE 1505–01–D**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA–HQ–OPP–2005–0234; FRL–7753–4]

#### Acetic acid, [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester (Cloquintocet-mexyl); Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting in part, and denying in part, pesticide petition PP 4E6831 submitted by Syngenta Crop Protection, Inc. that requested certain amendments to 40 CFR 180.560 for acetic acid [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester; cloquintocet-mexyl; CAS Reg. No. 99607–70–2] and its acid metabolite (5-chloro-8-quinolinoxyacetic acid). EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3) in the **Federal Register** of June 2, 2004 (69 FR 31116) (FRL–7357–8) announcing the filing of this petition requesting that the tolerance expressions under § 180.560 for wheat forage and hay be increased, the addition of tolerances for barley commodities (grain, hay, and straw), and the inclusion of a reference to the active ingredient pinoxaden. Although EPA finds it is safe to add a reference to pinoxaden and tolerances for barley (grain, hay, and straw) to this tolerance regulation, EPA does not agree that grounds exist to increase the tolerance expressions for wheat forage and hay. Thus, EPA is granting Syngenta’s petition in as far as it seeks to add the reference pinoxaden and tolerances for barley (grain, hay, and straw) but is denying the request to increase the tolerance expressions for wheat forage and hay.