

Dated: June 26, 2005.

Sally Brice-O'Hara,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[CGD05-04-035]

RIN 1625-AA00 and 1625-AA01

Anchorage Grounds and Safety Zone; Delaware River

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a permanent safety zone and modified certain anchorages in the area of the Marcus Hook Range when the U.S. Army Corps of Engineers (USACE) conducts its annual dredging operations. Annual dredging is necessary to maintain congressionally authorized channel depths. The safety zone and anchorage modifications are necessary to ensure safe vessel transits during the dredging operations. These regulations will alter the route of vessels transiting the channel and requirements for those vessels wishing to anchor during the dredging operations.

DATES: This rule is effective August 15, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-04-035 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jill Bessetti or Ensign Otis Barrett, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 15, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Anchorage Grounds and Safety Zone; Delaware River" in the *Federal Register* (69 FR 240). We received one letter commenting on the proposed rule in reference to the recent oil spill. Dredging did not occur in

2004, and the comment was unrelated to the actions of this final rule. No public meeting was requested, and none was held.

Background and Purpose

USACE conducts annual dredging operations on the Delaware River in the vicinity of the Marcus Hook Range to maintain the forty-foot Federal navigation project depth. The dredging occurs between September 1 and December 31 of each year.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range will be diverted through part of Anchorage 7 during the dredging operations. Therefore, additional requirements and restrictions on the use of Anchorage 7 are necessary.

This final rule also places a permanent safety zone in waters within a 150-yard radius around vessels engaged in dredging operations, and places additional requirements and restrictions at Anchorage 7 and Anchorage 6.

In prior years, the Coast Guard had established a temporary safety zone within a 150-yard radius of the dredge performing dredging operations in Marcus Hook Range.

This permanent safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range will have to divert from the main ship channel through Anchorage 7 and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel will be allowed to enter the safety zone unless it receives permission from the Captain of the Port or his designated representative.

Additionally, the Coast Guard has established vessel requirements on vessels in the affected anchorages. Pursuant to 33 CFR 110.157(b)(2) vessels are allowed to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7, the Coast Guard has added a paragraph in 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 7 during the USACE dredging. During the effective period, vessels desiring to use Marcus Hook Anchorage (Anchorage 7) must obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a "first come, first

served" basis. That vessel will be directed to a location within Anchorage 7 where it may anchor for a period not to exceed 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Mantua Creek, because they are the next closest anchorage grounds. To control access to Anchorage 7, the Coast Guard requires a vessel desiring to anchor in Anchorage 7 to obtain advance permission from the Captain of the Port. To control access to Anchorages 6 and 9, the Coast Guard requires that any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring.

The Coast Guard is also concerned that the holding grounds in Anchorages 6 and 9 are not as good as in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor and a vessel over 750 feet in length will require two tugs standing alongside. The tug(s) is/are required to have sufficient horsepower to prevent the vessel they are attending from swinging into the channel.

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 to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this final rule requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length that choose to anchor in Anchorages 6 and 9. Alternate anchorage grounds such as Anchorage A (Breakwater & Big Stone Beach) off the entrance to the Mispillion River and Anchorage 1 (Bombay Hook) off Bombay Hook Point in Delaware Bay, are reasonably close and generally available. Vessels anchoring in Breakwater and Big Stone are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. The

majority of vessels expected during the effective period are less than 700 feet and thus will not be required to have tugs alongside.

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.

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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 Junior Grade Jill Bessetti or Ensign Otis Barrett, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

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 does 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 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 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)(f) and (34)(g), of the Instruction. An “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 *CFR* Part 110

Anchorage grounds.

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 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; Department of Homeland Security Delegation No. 0170.1 and 33 *CFR* 1.05–1(g).

■ 2. Add § 110.157(b)(11) to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) Annually from September 1 until December 31, additional requirements and restrictions in this paragraph for the use of anchorages defined in paragraphs

(a)(7), (a)(8), and (a)(10) of this section apply.

(i) Before anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a "first-come, first-served" basis. The Captain of the Port, Philadelphia, will allow only one vessel at a time to be at anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours. Any vessel arriving from or departing to sea that requires an examination by the public health service, customs or immigration authorities will be directed to an anchorage for the required inspection by the Captain of the Port on a case-by-case basis.

(ii) For Anchorage 6 off Deepwater Point, as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The Master, owner or operator of a vessel at anchor shall ensure that any tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) As used in this section, Captain of the Port means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271-4807 or via VHF marine band radio, channel 16.

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PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. 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

■ 4. Add § 165.555 to read as follows:

§ 165.555 Safety Zone; Delaware River.

(a) *Definition.* As used in this section, Captain of the Port means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271-4807 or via VHF marine band radio, channel 16.

(b) *Location.* The following area is a safety zone: All waters located within a 150-yard radius around the dredging operation and barge, conducting dredging operations in or near the Marcus Hook Range in the vicinity of Anchorage 7.

(c) *Enforcement.* This safety zone will be enforced annually beginning on September 1 through December 31.

(d) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(2) All Coast Guard vessels enforcing this safety zone or watch officers aboard the Dredge and Barge can be contacted on VHF marine band radio, channel 16. The Captain of the Port may be contacted by telephone at (215) 271-4807 or via VHF marine band radio, channel 16.

Dated: July 1, 2005.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08-05-043]

Drawbridge Operation Regulations; Inner Harbor Navigation Canal—New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Ted Hickey Bascule Span Bridge across the Inner Harbor Navigation Canal, mile 4.6, at New Orleans, Orleans Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for thirty-six hours. This temporary

deviation is necessary for the replacement of the operating controls of the bridge.

DATES: This deviation is effective from 9 a.m. on Monday, August 1, 2005 through 9 p.m. on Tuesday, August 2, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130-3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: The Board of Commissioners of the New Orleans Levee Board has requested a temporary deviation in order to replace the operating controls and to calibrate the new controls of the Ted Hickey Bascule Span Bridge on Leon C. Simon Boulevard across the Inner Harbor Navigation Canal, mile 4.6, at New Orleans, Orleans Parish, Louisiana. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 9 a.m. on Monday, August 1, 2005 through 9 p.m. on Tuesday, August 2, 2005.

The bridge has a vertical clearance of 45 feet above Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of small ships, tows with barges, and recreational vessels, including sailing vessels. Due to prior experience, as well as coordination with waterway users, it has been determined that this thirty-six hour closure will not have a significant effect on these vessels. Normally, the draw of the bridge opens on signal, except that, from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m., Monday through Friday, the draw need not be opened for navigation, as provided for in 33 CFR 117.458(c). The bridge may not be able to open for emergencies during the closure period. Alternate routes are available via Chef Menteur Pass or Rigolets Pass and the Gulf Intracoastal Waterway.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.