

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 17, 2004.

**David P. Pecoske,**

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

[FR Doc. 04-22273 Filed 10-1-04; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01-04-123]

#### Drawbridge Operation Regulations: Connecticut River, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Route 82 Bridge, mile 16.8, across the Connecticut River at East Haddam, Connecticut. This deviation from the regulations allows the bridge to operate on a fixed opening schedule from October 16, 2004 through November 30, 2004. Under this temporary deviation the bridge must open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily. The bridge must open on signal at all times for commercial vessels after at least a two-hour advance notice is given. This deviation is necessary in order to facilitate necessary repairs at the bridge.

**DATES:** This deviation is effective from October 16, 2004 through November 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668-7195.

**SUPPLEMENTARY INFORMATION:** The Route 82 Bridge, at mile 16.8, across the Connecticut River has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.205(c).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate maintenance repairs at the bridge.

This deviation to the operating regulations allows the Route 82 Bridge to operate on a fixed opening schedule from October 16, 2004 through

November 30, 2004. Under this temporary deviation the bridge must open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily. At all other times, the bridge must open on signal for commercial vessels, provided that at least a two hour advance notice is given.

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.

Dated: September 17, 2004.

**David P. Pecoske,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 04-022]

RIN 1625-AA87

#### Security Zone; Suisun Bay, Concord, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to Pier Three at the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). In light of recent terrorist actions against the United States, this security zone is necessary to ensure the safe loading of military equipment and to ensure the safety of the public from potential subversive acts. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of Suisun Bay within 500 yards of Pier Three at the MOTCO facility unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** This rule is effective from 11:59 p.m. on October 2, 2004, to 11:59 p.m. on October 12, 2004. If the need for this security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of the security zone and will announce that fact via Broadcast Notice to Mariners.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San

Francisco Bay 04-022] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug L. Ebberts, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-2770.

#### 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 because the duration of the NPRM rulemaking process would extend beyond the actual period of the scheduled operations and defeat the protections afforded by the temporary rule to the cargo vessels, their crews, the public and national security.

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** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation. Delaying this rule's effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone.

##### Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York; the Pentagon in Arlington, Virginia; and Flight 93; the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on USS COLE and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of

the U.S. is endangered by the September 11, 2001, attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. Ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950, (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California, establish a temporary security zone in the navigable waters of the United States within 500 yards of Pier Three at the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents or criminal acts. This zone is also necessary to protect military operations

from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

#### Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone encompassing the navigable waters, extending from the surface to the sea floor, within 500 yards of any portion of Pier Three at Military Ocean Terminal Concord (MOTCO), California. There are three existing piers at the MOTCO facility. Originally there were four piers, numbered One through Four from west to east, but Pier One was destroyed in an explosion in 1944. Therefore, Pier Three is the middle of the 3 remaining piers. The area encompassed by this security zone includes a portion of the Port Chicago Reach section of the deepwater channel. Persons and vessels are prohibited from entering, transiting through or anchoring within this security zone unless authorized by the Captain of the Port (COTP) or his designated representative.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. Section 165.33 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a security zone. Vessels or persons violating this section may be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment from 5 to 10 years and a maximum fine of \$250,000), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, will also face imprisonment from 10 to 25 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, imprisonment up to 10 years, and a civil penalty of not more than \$25,000 for each day of a continuing violation.

#### 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).

Although this regulation restricts access to a portion of navigable waters, the effect of this regulation will not be significant because mariners will be advised about the security zone via public notice to mariners, and the zone will encompass only a small portion of the waterway for a short duration. In addition, vessels and persons may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

#### 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. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to anchor or transit to or from Suisun Bay via the Port Chicago Reach section of the channel. Although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels may receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing will have ample space outside of the security zone to engage in those

activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer 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 will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 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 (NTAA) (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.ID, 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), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where located 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, 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.T11-041 to read as follows:

#### **§ 165.T11-041 Security Zone; Navigable Waters of the United States Surrounding Pier Three at Military Ocean Terminal Concord (MOTCO), Concord, California.**

(a) *Location.* The security zone will encompass the navigable waters, extending from the surface to the sea floor, within 500 yards of any portion of

Pier Three at Military Ocean Terminal Concord (MOTCO), California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of this security zone may contact the Patrol Commander on scene on VHF-FM channel 13 or 16 or the Captain of the Port at telephone number 415-399-3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Effective period.* This section becomes effective at 11:59 p.m. on October 2, 2004, and terminates at 11:59 p.m. on October 12, 2004. If the need for this security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of the security zone and will announce that fact via Broadcast Notice to Mariners.

Dated: September 27, 2004.

**Gordon A. Loebel,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay, California.*

[FR Doc. 04-22271 Filed 10-1-04; 8:45 am]

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## POSTAL SERVICE

### 39 CFR Part 111

#### General Information on Postal Service

**AGENCY:** Postal Service.

**ACTION:** Final Rule.

**SUMMARY:** This rule amends the Postal Service regulations to reflect current information regarding the publication and availability of the Domestic Mail Manual (DMM).

**DATES:** *Effective Date:* This final rule is effective on October 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sherry L. Freda, (202) 268-7259.

**SUPPLEMENTARY INFORMATION:** This rule amends 39 CFR part 111 to conform to the yearly publication schedule of the Domestic Mail Manual, and to reflect the publication and availability of the DMM to all users on the Internet at <http://pe.usps.gov>. The table of contents of the DMM previously set forth in § 111.5 is removed as superfluous.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure.

■ In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 111 as follows:

■ 1. The authority citation for part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3626, 5001.

#### § 111.1 [Amended]

■ 2. Amend § 111.1 by removing the words “published twice each year in January and July, unless otherwise determined by the Postal Service” and adding the words “published and maintained by the Postal Service” in their place.

#### § 111.2 [Amended]

■ 3. Amend § 111.2—

■ A. In paragraph (a) by adding at the end the following sentence: “The Domestic Mail Manual is available for examination on the Internet at <http://pe.usps.gov>.”; and

■ B. In paragraph (c) by removing the words “A 1-year subscription to the Domestic Mail Manual for two consecutive issues” and adding the words “Subscriptions to the Domestic Mail Manual” in their place.

#### § 111.5 [Removed and reserved]

■ 4. Remove and reserve § 111.5.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 04-22231 Filed 10-1-04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7823-8]

#### Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** Nebraska has applied to the EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not

expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Nebraska's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This final authorization will become effective on December 3, 2004 unless the EPA receives adverse written comment by November 3, 2004. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. E-mail: [haugen.lisa@epa.gov](mailto:haugen.lisa@epa.gov).

3. Mail: Lisa Haugen, Environmental Protection Agency, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to Lisa Haugen, Environmental Protection Agency, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov), or e-mail. The [Federal regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.