

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[CGD05-04-035]

RIN 1625-AA00, 1625-AA01

Anchorage Grounds and Safety Zone; Delaware River

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone and to modify Anchorage 6 off Deepwater Point, Anchorage 7, off Marcus Hook, and Anchorage 9, near the entrance to Mantua Creek on the Delaware River in the area of the Marcus Hook Range Channel. The U.S. Army Corps of Engineers (USACE) conducts annual dredging operations between September 1 and December 31, which is necessary to maintain congressionally authorized project depths. The safety zone and anchorage modifications are necessary to ensure safe vessel transits during the dredging operations. These regulations will temporarily alter the route of vessels transiting the channel and requirements for those vessels wishing to anchor during the dredging operations.

DATES: Comments and related material must reach the Coast Guard on or before January 14, 2005.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147. The Marine Safety Office Philadelphia Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Philadelphia between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-04-035), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting but you may submit a request for a meeting by writing to the Marine Safety Office Philadelphia, Waterways Management Branch to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

USACE conducts annual dredging operations on the Delaware River in the vicinity of the Marcus Hook Range Channel to maintain the authorized 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 Channel 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.

For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard also proposes to establish a safety zone in all waters within a 150-yard radius around the dredging vessels. The safety zone is intended to protect mariners from the potential hazards associated with dredging operations and equipment, and to protect vessels engaged in dredging operations.

Discussion of Proposed Rule

The Coast Guard proposes to place a permanent safety zone in waters within

a 150-yard radius around vessels engaged in dredging operations in the Marcus Hook Range Channel and to place additional requirements and restrictions at Anchorage 6 and Anchorage 7.

The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Channel will need 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 would be allowed to enter the safety zone unless it received permission from the Captain of the Port or his designated representative.

The Coast Guard is proposing the placement of additional requirements on vessels in the affected anchorages. Pursuant to 33 CFR Section 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 is adding a paragraph in 33 CFR 110.157(b) to provide additional requirements and restrictions on vessels utilizing Anchorage 7 during the USACE dredging of Marcus Hook Reach Channel. During the enforcement period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port would permit only one vessel at a time to anchor in Anchorage 7 and would grant permission on a "first come, first serve" basis. A vessel would be directed to a location within Anchorage 7 where it may anchor, and would not be permitted to remain in Anchorage 7 for more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 would use Anchorage 6 or Anchorage 9, because they are the next closest anchorage grounds. To control access to Anchorage 7, the Coast Guard proposes to require 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 would require any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. Anchorages 6 and 9 are not as large as Anchorage 7; therefore the need exists to have one or two tugs on scene while a vessel is anchored in those anchorages. The purpose of this is to prohibit vessels from swinging into the channel or going

aground. A vessel 700 to 750 feet in length would be required to have one tug standing alongside while at anchor and a vessel over 750 feet in length would require two tugs standing alongside. The tug(s) would be required to have sufficient horsepower to prevent the vessel they are attending from swinging into the channel.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed regulation would require 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 off the entrance to Mispillion River (Breakwater & Big Stone Beach) and Anchorage 1 off Bombay Hook Point (Bombay Hook) in Delaware Bay, are reasonably close and generally available. Vessels anchoring in Breakwater and Big Stone Beach 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 enforcement 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 proposed 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 greatest impact of this proposed rule would be on vessels larger than 700 feet in length that choose to anchor in Anchorages 6 and 9. This proposed rule

would have no impact on any small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic 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 section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed 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 Kevin Sligh or Ensign Jill Munsch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

Collection of Information

This proposed 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 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 will 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 Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

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.

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 proposed 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, paragraphs 34(f) and (34)(g), of the Instruction, from further environmental documentation.

A draft “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; 33 CFR 1.05–1(g). Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.157 by adding paragraph (b)(11) to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) From September 1 through December 31 each year, the following requirements and restrictions 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-serve” 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 near entrance to Mantua Creek, 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 Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized 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, channels 13 and 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 § 165.509 to read as follows:

§ 165.509 Safety Zone; Delaware River

(a) *Definition.* As used in this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia 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, channels 13 and 16.

(b) *Location.* The following area is a safety zone:

All waters located within a 150-yard radius arc centered on the dredging operation and barge, conducting dredging operations in or near the Marcus Hook Range Channel in the vicinity of Anchorage 7 off Marcus Hook.

(c) *Enforcement.* This safety zone will be enforced annually from 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, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

Dated: August 19, 2004.

Ben Thomason III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–047]

RIN 1625–AA09

Drawbridge Operation Regulations; Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of