

to ensure the safety of participants, spectators, and transiting vessels, 33 CFR 100.501 will be enforced for the duration of the event. Under the provisions of 33 CFR 100.501, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area as the race progresses, when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: September 1, 2004.

**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

[CGD05-04-172]

**RIN 1625-AA00**

**RIN 1625-AA01**

#### **Anchorage Grounds and Safety Zone; Delaware Bay and River**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Delaware Bay and River around the Weeks Dredge and Barge 312 and is placing additional requirements on vessels in Anchorage 6 off Deepwater Point, Anchorage 7 off Marcus Hook, and Anchorage 9 near the entrance to Mantua Creek. The Army Corps of Engineers dredges parts of the Delaware River including the Marcus Hook Range Ship Channel to maintain congressionally authorized depths. These regulations will help ensure the safety of vessels transiting the channel as well as vessels engaged in dredging operations.

**DATES:** This rule is effective from September 15, 2004, to December 31, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-04-172 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 Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office Philadelphia, at (215) 271-4889.

#### **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) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Allowing for a comment period is impracticable and contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic. However, advance notification will be made to affected mariners via marine information broadcasts.

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

The U.S. Army Corps of Engineers (USACE) conducts dredging operations on the Delaware River in the vicinity of the Marcus Hook Range Ship Channel to maintain the 40-foot project depth.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7 off Marcus Hook ("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 is also establishing a safety zone around the dredging vessels, Weeks Dredge and Barge 312. The safety zone is intended to protect mariners from the potential hazards associated with dredging operations and equipment.

##### **Discussion of Temporary Final Rule**

Currently paragraph (b)(2) of 33 CFR 110.157 allows vessels to anchor for up to 48 hours in the anchorage grounds listed in Section 110.157(a), which includes Anchorage 7. However, because of the temporary re-routing of vessel traffic through Anchorage 7, the Coast Guard is adding a paragraph (b)(11) in 33 CFR 110.157 to provide

additional requirements and restrictions on vessels using Anchorage 7. During the effective period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia. Vessels should seek this permission 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. A vessel will be directed to a location within Anchorage 7 where it may anchor and will not be permitted to remain in Anchorage 7 for more than 12 hours.

Any vessel that is arriving from or departing for sea requiring 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.

When Anchorage 7 is occupied, the Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point ("Anchorage 6") or Anchorage 9 near the entrance to Mantua Creek ("Anchorage 9"), because they are the closest anchorage grounds to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. The Captain of the Port may be contacted by telephone at (215) 271-4807 or via VHF marine band radio, channels 13 and 16. To control access to Anchorages 6 and 9, the Coast Guard is requiring 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 ground in Anchorages 6 and 9 is not as solid as it is 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 must have two tugs standing alongside. The tug must be of sufficient size and horsepower to prevent an anchored vessel from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7, by the Weeks Dredge Barge 312. The safety zone is intended to protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel 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 may enter the safety zone unless permission is received from the Captain of the Port.

#### **Regulatory Evaluation**

This temporary rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 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 regulation 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) and Anchorage 1 (Big Stone) in Delaware Bay, are reasonably close and generally available. Vessels anchoring in Anchorages A and 1 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. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected to anchor 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. This rule’s greatest impact is on vessels greater than 700 feet in length, which choose to anchor in Anchorages 6 and 9. This rule will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this will not have a significant 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 want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

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 Guards, call 1–888–REG–FAIR (1–888–743–3247). 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 would not result in such 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 will not create an environmental risk to health or risk to safety that might 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 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.

#### **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. 4321–43701, 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 (g) of the Instruction from further environmental documentation.

#### 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, 2071; Department of Homeland Security Delegation No. 0170.1 and 33 CFR 1.05–1(g).

■ 2. From September 15, 2004, until December 31, 2004, amend § 110.157 by adding paragraph (b)(11), to read as follows:

##### § 110.157 Delaware Bay and River.

\* \* \* \* \*

(b) \* \* \*

(11) From September 15, 2004, until December 31, 2004, 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. Vessels should seek this permission 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 that is arriving from or departing for 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 must obtain permission from the Captain of the Port, Philadelphia, Pennsylvania. Vessels should seek this permission at least 24 hours in advance.

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

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

(D) The Master, owner or operator of a vessel at anchor must 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. From September 15, 2004, until December 31, 2004, add temporary § 165.T05–172 to read as follows:

##### § 165.T05–172 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 Ship Channel in the vicinity of Anchorage 7.

(c) *Effective period.* This section is effective from September 15, 2004, until December 31, 2004.

(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: September 2, 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 165

[CGD01–04–099]

RIN 1625–AA00

##### Safety Zone; Wiscasset, ME, Demolition of Maine Yankee Former Containment Building

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone around the former Maine Yankee Nuclear Power Plant during the demolition of the containment building. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the demolition of a large building by controlled implosion. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

**DATES:** This rule is effective from 12:01 a.m. e.d.t. on September 3, 2004, through 11:59 p.m. e.d.t. on September 30, 2004.

**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