

Intracoastal Waterway, mile 357.2 west of Harvey Locks, at Galveston, Galveston County, Texas. The repairs are necessary to ensure the safety of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7:30 a.m. until 11:30 a.m. and from 1:30 p.m. until 5:30 p.m. on Tuesday, May 25, 2004.

The bridge has a vertical clearance of 10 feet above mean high water in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. No alternate routes are available.

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: April 21, 2004.

**J.W. Stark,**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01-04-039]

#### Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

**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 Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain closed from 7 a.m. on May 17, 2004 through 4 p.m. on May 22, 2004, to facilitate bridge maintenance.

**DATES:** This deviation is effective from May 17, 2004 through May 22, 2004.

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

**SUPPLEMENTARY INFORMATION:** The New York City Department of Transportation (NYCDOT) Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

NYCDOT, requested a temporary deviation from the drawbridge operation regulations to facilitate bridge maintenance repairs. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from 7 a.m. on May 17, 2004 through 4 p.m. on May 22, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: April 27, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD01-04-040]

RIN 1625-AA00

#### Safety Zone; Transit of Rig Pride Portland, Portland, ME

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone around the oilrig Pride Portland and its assisting tugs during the unmooring and outbound transit of the rig from the vicinity of the Portland Ocean Terminal in Portland Harbor out to conduct sea trials, the return of the rig from sea trials and the final transit out of Portland Harbor upon completion of the rig's construction. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the transit of a large tow with limited maneuverability. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

**DATES:** *Effective Date:* This rule is effective from April 29, 2004 through June 30, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01-04-040 and are available for inspection or copying at Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780-3251.

#### 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 complex planning and coordination involved, final details for the transit were not provided to the Coast Guard until April 23, 2004, making it impossible to publish a NPRM or a final rule 30 days in advance.

Under 5 U.S.C. 533(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 the public interest due to the risks inherent in the transit of a large rig and assisting tugs with limited maneuverability in a narrow channel.

##### Background and Purpose

On April 23, 2004 representatives of Petrodrill Engineering NV presented the Coast Guard with plans for the transit of the oilrig Pride Portland. The rig will be towed from the Portland Ocean Terminal in Portland Harbor through the main channel out to sea with the assistance tugs. The tentative date for this operation is April 29, 2004 but may be changed due to weather, winds, or other unexpected delays. The rig will remain on sea trials for approximately two weeks and will then return to Portland. The tentative date for the return is May 15, 2004. Once final repairs and adjustments are made, and provisions loaded, the rig will depart Portland Harbor for its final destination. The tentative date for this departure is May 29, 2004 but may be earlier or later depending upon the necessary repairs, adjustments and provision schedules. This safety zone will remain in effect anytime the rig is underway, in the process of mooring or unmooring in Portland Harbor and during its

approaches to Portland Harbor in Casco Bay.

#### Discussion of Rule

This rule establishes a safety zone 100-yards around the oilrig Pride Portland, and any assisting tugs while the rig is in the process of mooring or unmooring, or connecting to the tugs in the vicinity of the Portland Ocean Terminal in Portland Harbor. When the Pride Portland is underway, this rule establishes a safety zone 200-yards ahead, and 100-yards aside and astern of the oilrig Pride Portland and assisting tugs. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the transit of a large oilrig with limited maneuverability. The Captain of the Port, Portland, Maine will notify the marine community when these zones are being enforced, using marine safety information broadcasts and on-scene notifications by Coast Guard personnel and patrol vessels.

#### 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 paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation will not be significant for several reasons: There will be impact on the navigational channel for only a minimal amount of time, there is room for vessels to navigate around the zone, delays, if any, will be minimal, and broadcast notifications will be made to the maritime community advising them of the boundaries of the zone before and during its enforcement periods. During the transits vessels will be able to arrange safe passage with the pilot via VHF radio, Channels 13 or 16.

#### 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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Portland Harbor and the main channel on the dates the transits occur.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The nature of this rule will dictate that the safety zone will not impede vessel traffic for an extended period of time. Vessel traffic can safely pass around the zone.

#### 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 the 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 the 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.

#### 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)(g), of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping

requirements, Security measures, Waterways.

■ For the reasons set out 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. From April 29, 2004, through June 30, 2004, add temporary section, 165.T01–040 to read as follows:

### **§ 165.T01–040 Safety Zone; Portland, Maine, Tow of Rig Pride Portland.**

(a) *Location.* The following areas are safety zones: (1) All navigable waters of Portland Harbor, extending from the surface to the sea floor, within 100-yards of the rig Pride Portland and any assisting tugs while the rig Pride Portland is in the process of mooring, unmooring or connecting to the tugs in the vicinity of the Portland Ocean Terminal in Portland Harbor.

(2) All navigable waters of Portland Harbor and Casco Bay extending from the surface to the sea floor, extending 200-yards ahead, and 100-yards aside and astern of the rig Pride Portland and any assisting tugs while the rig is underway.

(b) *Effective date.* This rule is effective from April 29, 2004, through June 30, 2004.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. The COTP or his designated representative will notify the maritime community of periods during which these zones will be enforced. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative. Upon being hailed by U.S. Coast Guard personnel or a U.S. Coast Guard vessel, via siren, radio, flashing light, or other means, those hailed shall proceed as directed.

(3) Entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

Dated: April 28, 2004.

**Gregory D. Case,**

*Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Portland, Maine.*

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[COTP Memphis–04–002]

RIN 1625–AA00

### **Safety Zone; McCellan-Kerr Arkansas River, Mile 307 to 309.5, Fort Smith, AR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all waters of the McCellan-Kerr Arkansas River from mile 307 to mile 309.5 in Fort Smith, AR. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative.

**DATES:** This rule is effective from 9 p.m. until 10:15 p.m. on July 4, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Memphis–04–002] and are available for inspection or copying at Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### **FOR FURTHER INFORMATION CONTACT:**

Chief Petty Officer (CPO) James Dixon at Marine Safety Office Memphis, (901) 544–3941, extension 2116.

#### **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 a NPRM in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the hazards associated with a fireworks display.

## **Background and Purpose**

The Mayor's 4th of July celebration fireworks display will be launched from a barge between mile 307 and 309.5 on the McCellan-Kerr Arkansas River. A hazardous situation could exist for vessels, mariners and spectators in the vicinity of the fireworks display. A safety zone is needed to protect those vessels, mariners and spectators from the hazards associated with this fireworks display.

## **Discussion of Rule**

The Captain of the Port Memphis is establishing a safety zone for all waters of the McCellan-Kerr Arkansas River from mile 307 to mile 309.5 for the Mayor's 4th of July celebration fireworks display in Fort Smith, AR. Entry into this zone by persons or vessels is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or by telephone at (901) 544–3912, extension 2124. This rule is effective from 9 p.m. until 10:15 p.m. on July 4, 2004.

## **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).

This rule will only be in effect for approximately one hour and fifteen minutes. Notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

## **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