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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-25

[CGD05-04-140]

RIN 1625-AA00

Security Zone; Delaware Bay

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing 500-yard temporary security zone around the M/V CENK KAPTANOGLU while transiting to Big Stone anchorage in the Captain of the Port Philadelphia's area of responsibility. Upon arrival at Big Stone anchorage, all vessels will be prohibited from entering within a 1000-yard radius while the M/V CENK KAPTANOGLU is anchored or moored. This security zone is needed to ensure public safety and the safe transit of the M/V CENK KAPTANOGLU while to the Delaware Bay. The temporary moving security zone prohibits vessels from entering within a 500-yard radius of the M/V CENK KAPTANOGLU while in transit, and within a 1000-yard radius of the M/V CENK KAPTANOGLU while moored or anchored in Big Stone anchorage, unless authorized by the Captain of the Port, Philadelphia, Pennsylvania, or his designated

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representative. This security zone is limited in duration and will affect the M/V CENK KAPTANOGLU only and a small area at any given time.

DATES: This rule is effective from July 22, 2004 through July 26, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket CGD05-04-140 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 Ensign Jill Munsch, Coast Guard Marine Safety Office/Group 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), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the effective date would be contrary to the public interest, since immediate action is needed to continue to protect the public, ports and waterways of the United States.

Under 5 U.S.C. 553(d) (3), the Coast Guard finds good cause exists for making this rule effective less than 30

days after publication in the Federal Register. Publishing a NPRM and delaying the effective date would be contrary to the public interest, since immediate action is needed to continue to protect the public, ports and waterways of the United States. The Coast Guard was notified on July 22, 2004 by the master of the M/V CENK KAPTANOGLU of a bomb onboard the vessel. It would be impracticable to delay publishing this security zone, which would impede on the safety of the M/V CENK KAPTANOGLU and mariners.

Background and Purpose

The terrorist attacks of September 11, 2001 highlighted the need for heightened security measures at United States seaports. The President has found, pursuant to law, including the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks. The Captain of the Port of Philadelphia has determined that a security zone is necessary to protect the public, the waterway and the M/V CENK KAPTANOGLU from potential subversive acts.

Discussion of the Regulation

This temporary rule establishes a 1000-yard security zone around the M/V CENK KAPTANOGLU while it is moored or anchored and a 500-yard security zone around the M/V CENK KAPTANOGLU while transiting the Delaware Bay. No vessels or

persons shall come within a 500 yard radius of the M/V CENK KAPTANOGLU while it is underway, nor come or remain within a 1000 yard radius of the M/V CENK KAPTANOGLU while it is moored or anchored without the permission of the Captain of the Port, Philadelphia, Pennsylvania or his designated representative.

This zone will be enforced around the M/V CENK KAPTANOGLU while it is transiting Listen, Cross Ledge, Mai Maull, and Brandywine ranges and while the vessel is anchored or moored in Big Stone Anchorage. A Broadcast Notice to Mariners will be issued to notify mariners to make alternate plans for transiting the affected waterway.

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).

The primary impact of this rule will be on vessels wishing to transit the affected waterway in the vicinity of the M/V CENK KAPTANOGLU. Although this rule restricts traffic from freely transiting portions of the Delaware Bay,

the restrictions are limited in duration and affect only a limited area.

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 may affect the following entities, some of which may be small entities: owners or operators of vessels wishing to transit the affected waterways of the Delaware Bay.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration and affect only a limited area. A broadcast notice to mariners will be issued to notify mariners to make alternate plans for transiting the affected waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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.

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).

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect 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

Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security 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 (g), of

Commandant Instruction M16475.1D, from further environmental documentation.

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

List of Subjects in 33 CFR Part 165

General, Regulated Navigation Areas, Safety Zones, Security Zones, Restricted Waterfront Areas, Specific Regulated Navigation Areas and Limited Access Areas.

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. Chapters 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.T05-140.

§ 165.T05-140 Security Zone; Delaware Bay

(a) Location.: The navigable waters of the Captain of the Port, Philadelphia zone in the Delaware Bay from Listen Range to Cross Ledge Range to Mai Maull Range to Brandywine Range and Bigstone Anchorage (Anchorage A).

(b) Regulations

(1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) The 500 yard moving security zone prohibits a person or a vessel from transiting or remaining within a 500 yard radius of the M/V CENK KAPTANOGLU while the vessel is in transiting in the Delaware Bay and Big Stone Anchorage, unless authorized by the Captain of the Port Philadelphia, PA or designated representative.

(3) No person or vessel may come within 1000 yards of the M/V CENK KAPTANOGLU while it is moored or anchored, unless authorized by the Captain of the Port Philadelphia, PA, or designated representative.

(4) Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Captain of the Port Philadelphia, PA or designated representative and leave the security zone immediately if the Captain of the Port Philadelphia, PA or designated representative so orders.

(5) The Coast Guard enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271-4807.

(c) Maneuver-restricted vessels. When conditions permit, the on-scene official patrol or Captain of the Port, or designated representative shall:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within the 500 yard zone around the transiting passenger vessel in order to ensure safe passage in accordance with the Navigation Rules as seen in 33 CFR chapter I, subchapters D and E; and

(2) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver that must transit via a navigable channel or waterway to pass within 1000 yards of the M/V CENK KAPTANOGLU while anchored.

(d) Stationary vessels. When the M/V CENK KAPTANOGLU approaches within 500 yards of any moored or anchored stationary vessel, the stationary vessel must remain moored or anchored. The 500-yard security zone around the M/V CENK KAPTANOGLU will remain in effect while the vessel is transiting near the stationary vessel. The stationary vessel must remain moored or anchored unless it is either ordered by or given permission by the Captain of the Port, Philadelphia or designated representative to do otherwise.

(e) Definitions.

(1) 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 as a designated representative on his behalf.

(d) Effective dates. This section is effective from July 22, 2004 through July 26, 2004.

Dated: 22 JULY 2004

A handwritten signature in black ink, appearing to read 'Spencer L. Wood', with a large, stylized flourish at the end.

Spencer L. Wood
Commander, U.S. Coast Guard
Acting Captain of the Port Philadelphia