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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG 2004-19416-30

[CGD05-04-159]

RIN 1625-AA00

Security Zone; Delaware River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone between Crum Creek and Darby Creek on the Delaware River in Ridley Park, PA. All vessels will be prohibited from entering the waters of the Delaware River from Crum Creek to Darby Creek, extending 1000 yards from the shoreline into the Delaware River in Ridley Park, PA. This security zone is necessary to protect the public, port, and waterways of the Delaware River during a marine event.

DATES: This rule is effective on the day of August 17, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket CGD05-04-159 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

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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 because we were first notified on August 12, 2004 of the event. 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 August 12, 2004 of this event.

Background and Purpose

The Captain of the Port of Philadelphia has determined that a security zone is necessary for the

protection of the public, port, and waterways during a marine event. This temporary rule establishes a 1000-yard security zone from the shore to the river in the vicinity of Crum Creek and Darby Creek. No vessels or persons shall enter this security zone without the permission of the Captain of the Port, Philadelphia, Pennsylvania or his designated representative.

This zone will be enforced throughout the duration of the event on August 17, 2004. A Broadcast Notice to Mariners will be issued to notify mariners to make alternate plans for transiting the affected waterway. The security zone will not affect the navigable channel.

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. Although this rule restricts traffic from freely transiting portions of the Delaware River, the restrictions are limited in duration

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 River.

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.T05-159.

§ 165.T05-159 Security Zone; Delaware River

(a) Location.: The waters of the Delaware River from Crum Creek to Darby Creek, extending 1000 yards from the shoreline into the Delaware River in Ridley Park, PA.

(b) Regulations

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

(2) The 1000 yard security zone prohibits a person or a vessel from transiting or remaining within the area between Crum Creek and Darby Creek in Ridley Park, PA,

unless authorized by the Captain of the Port Philadelphia, PA or designated representative.

(3) No person or vessel may come within 1000 yards from the shoreline out into the Delaware River in the vicinity of Crum Creek and Darby Creek in Ridley Park, PA, 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.

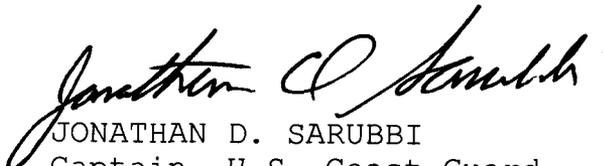
(5) The Coast Guard enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271-4807.

(c) 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.

(e) Effective dates. This section is effective on August 17, 2004.

Dated: **AUG 16 2004**


JONATHAN D. SARUBBI
Captain, U.S. Coast Guard
Captain of the Port Philadelphia