

Dated: April 6, 2004.

Marcus Redford,

Bridge Administrator.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-04-066]

RIN 1625-AA00

#### Security Zone; Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay, Delaware River and Its Tributaries

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing 500-yard temporary security zones throughout the Captain of the Port Philadelphia's area of responsibility around escorted passenger vessels in transit and 100-yard security zones around moored or anchored passenger vessels. The security zones are needed to ensure public safety and the safe transit of the passenger vessels in the Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay, Delaware River and its tributaries. The temporary moving security zones prohibit vessels from entering within a 500-yard radius of the escorted passenger vessels while in transit, and within a 100-yard radius of passenger vessels while moored or anchored, unless authorized by the Captain of the Port, Philadelphia, Pennsylvania, or his designated representative. These security zones are limited in duration and affect only certain passenger vessels and a small area at any given time.

**DATES:** This rule is effective from April 2, 2004, through September 1, 2004.

**ADDRESSES:** Documents as indicated in this preamble are available as part of docket CGD05-04-066 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 March 29, 2004, of scheduled port calls by passenger vessels, making it impracticable for the safety of passenger vessels and mariners to delay publishing this security zone.

The Coast Guard plans to publish a NPRM proposing a permanent rule for security zones around passenger vessels and requesting public comment.

### 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 security zones are necessary to protect the public, the waterway, and passenger vessels from potential subversive acts.

### Discussion of the Regulation

This temporary rule establishes 100-yard security zones around moored or anchored passenger vessels and 500-yard security zones around escorted passenger vessels while transiting the Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay, Delaware River and its tributaries. The Captain of the Port, Philadelphia, Pennsylvania's zone extends out in the Atlantic Ocean from the shoreline to 12 miles. For purposes of this rule, "passenger vessel" is defined as a vessel greater than 100 feet in length, over 100 gross tons, and that is authorized to carry 500 or more passengers, making voyages lasting more than 24 hours, except for a ferry. No vessels or persons may come within

a 500-yard radius of an underway, escorted passenger vessel, nor come or remain within a 100-yard radius of a moored or anchored passenger vessel without the permission of the Captain of the Port, Philadelphia, Pennsylvania or his designated representative.

These zones will be enforced around moving escorted passenger vessels and stationary passenger vessels while they are within the Captain of the Port of Philadelphia zone. A Broadcast Notice to Mariners will be issued to notify mariners to aid them in making 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 passenger vessel security zone. Although this rule restricts traffic from freely transiting portions of the Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay, Delaware River and its tributaries, 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 Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay, Delaware River and its tributaries.

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.

#### 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 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

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

■ 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. From April 2, 2004, through September 1, 2004, add §165.T05-066.

#### § 165.T05-066 Security Zone; Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay, Delaware River and its tributaries.

(a) *Location.* All navigable waters within 500 yards of escorted passenger vessels when they are in the Captain of the Port, Philadelphia zone, as established in 33 CFR 3.25-05.

(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 zones prohibit a person or a vessel from transiting or remaining within a 500-yard radius of an escorted passenger vessel while the passenger vessel is transiting in the Captain of the Port Philadelphia area of responsibility, unless authorized by the Captain of the Port Philadelphia, PA or designated representative.

(3) No person or vessel may come within 100 yards of a moored or anchored passenger vessel, unless authorized by the Captain of the Port Philadelphia, PA, or designated representative.

(4) Any person or vessel authorized to enter a 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) When a passenger vessel 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 passenger

vessel will remain in effect while the passenger 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.

(6) The Coast Guard official 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 may:

(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 100 yards of an anchored passenger vessel.

(d) *Definitions.* 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 as a designated representative on his behalf.

*Passenger vessel* means a vessel greater than 100 feet in length, over 100 gross tons, and is authorized to carry 500 or more passengers, making voyages lasting more than 24 hours, except for a ferry.

Dated: April 2, 2004.

**Jonathan D. Sarubbi,**

*Captain, U.S. Coast Guard, Captain of the Port Philadelphia.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04-782, MM Docket No. 01-293, RM-10302, RM-10547]

**Radio Broadcasting Services; Apache, Ardmore, Bennington, OK; Bonham, Bridgeport, TX; Cache, OK; Crowell, TX; Elk City, Lawton, OK; Palestine, Ranger, Stephenville, Wellington, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants a counterproposal to upgrade Station KBOC(FM), Bridgeport, TX, from Channel 252A to Channel 252C0. To accommodate this upgrade, six other changes to the FM Table of Allotments are being made. The document also dismisses a mutually exclusive proposal to allot Channel 250C3 at Crowell, TX, and approves a settlement agreement between the parties. *See* 66 FR 53755, October 24, 2001. *See also*

**SUPPLEMENTARY INFORMATION.**

**DATES:** Effective May 10, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Andrew J. Rhodes, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket 01-293, adopted March 24, 2004, and released March 26, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

The reference coordinates for Channel 250C0 at Bridgeport, TX, are 33-26-13 and 97-29-05. To accommodate this upgraded allotment, the document (1) reallocates and changes the community of license for Station KCUB(FM) from Channel 252A at Stephenville, TX, to Channel 253A at Ranger, TX, at reference coordinates 32-22-55 and 98-45-55; (2) downgrades Station KYYK(FM), Palestine, TX, from Channel 252C2 to Channel 252C3 at reference coordinates 31-46-17 and 95-37-54; (3) downgrades, reallocates, and changes the community of license for Station KFYZ(FM) from Channel 252C3 at Bonham, TX, to Channel 251A at

Bennington, OK, at reference coordinates 34-04-00 and 95-59-52; (4) reallocates and changes the community of license for Station KACO(FM) from Channel 253C3 at Ardmore, OK, to Channel 253C3 at Apache, OK, at reference coordinates 34-53-34 and 98-14-01; (5) downgrades Station KTIJ(FM), Elk City, OK, from Channel 253C to Channel 295C1 at reference coordinates 35-15-36 and 99-33-08; and (6) substitutes Channel 253C3 for vacant Channel 298C3 at Wellington, TX, at reference coordinates 34-49-13 and 100-14-29. The FM Table of Allotments currently lists Channel 253A at Ardmore, Oklahoma. In 1997, the Audio Division granted Station KACO(FM) a construction permit to specify operation on Channel 253C3 in lieu of Channel 253A, BMPH-970307IC, to which a license was granted to cover this construction permit in 1998, BPH-19971010KI.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Apache, Channel 253C3, by removing Channel 253A at Ardmore, by adding Bennington, Channel 251A, by adding Cache, Channel 250A, by removing Channel 253C and adding Channel 295C1 at Elk City, and by removing Channel 251C1 at Lawton.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Bonham, Channel 252C3, by removing Channel 252A and adding Channel 252C0 at Bridgeport, by removing Channel 252C2 and adding Channel 252C3 at Palestine, by adding Ranger, Channel 253A, by removing Stephenville, Channel 252A, and by removing Channel 298C3 and adding Channel 253C3 at Wellington.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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