

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. This rule establishes a safety zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are 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, 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. 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. Add temporary § 165.T05–137 to read as follows:

#### § 165.T05–137 Safety zone; Fireworks Display, Potomac River, Charles County, Maryland.

(a) *Location.* The following area is a safety zone: All waters of the Potomac River, surface to bottom, enclosed within a 600 foot radius around the position 38°20′30″ N, 077°14′30″ W. All coordinates reference Datum NAD 1983.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at (410) 576–2693 or by radio on VHF–FM channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer

on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.*

*Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective period.* This section is effective from 8 p.m. to 10:30 p.m. on August 14, 2004, with a rain date of August 28, 2004.

Dated: July 22, 2004.

**Jonathan C. Burton,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.*

[FR Doc. 04–17530 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–15–P

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CGD05–03–116]

RIN 1625–AA87 (Formerly 1625–AA00)

#### Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a security zone in the Captain of the Port, Philadelphia, PA zone, immediately adjacent to the nuclear power facility at Three Mile Island Generating Station. This zone is needed to ensure public safety and security from subversive or terrorist acts. This rule is intended to prevent future terrorist attacks against nuclear power facilities by denying entry into the zone unless authorized by the Captain of the Port or designated representative.

**DATES:** This rule is effective on August 1, 2004.

**ADDRESSES:** Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD05–03–116, 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 Philadelphia, at (215) 271–4889.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

On September 16, 2003, we published a notice of proposed rulemaking (NPRM) entitled “Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA” in the **Federal Register** (68 FR 54177). We received one letter commenting on the proposed rule. The letter requested clarification on the coordinates of the proposed security zone.

In addition the following temporary final rule was published in the **Federal Register**:

“Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA” (68 FR 33399, June 4, 2003). This temporary final rule established a security zone around the Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA. The original effective date of the temporary final rule was to expire at 5 p.m. (EST) on January 24, 2004. The effective date has been extended through July 31, 2004 (69 FR 10616, March 8, 2004).

#### Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists’ ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President’s finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to*

*Certain Terrorist Attacks*, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-06 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A security zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect vessels from damage, injury, or terrorist attack.

The Captain of the Port of Philadelphia has determined that this security zone is necessary to protect the public, ports, and waterways of the United States from potential subversive acts. This security zone is similar to the existing temporary security zone established for waters around nuclear power facilities in Ocean County, NJ, (69 FR 5282, February 4, 2004) and Salem County, NJ, (69 FR 5277, February 4, 2004) which became effective final rules on March 5, 2004.

#### Discussion of Comments and Changes

During the public comment period we received one comment requesting clarification of the coordinates concerning this security zone. This information was provided prior to publication of the extended temporary final rule. It did not impact the need for a public meeting. The only change to the proposed rule was to add the contact information for the Security Manager at Three Mile Island Nuclear Power Plant. A public meeting was considered, however no requests for a public

meeting were received and no public meeting was held.

The Captain of the Port met with representatives from Pennsylvania's Office of the Governor, Pennsylvania Office of Homeland Security, the Pennsylvania State Police and Pennsylvania Fish and Boat Commission regarding the patrol and enforcement feasibility by the state of Pennsylvania. The State has agreed in principle and signed a Memorandum of Agreement related to the security zone around Three Mile Island Generating Station, notify each agency of any proposed changes, periodic patrol assistance, enforcement and investigation into any security zone violations.

Federal, state and local agencies will assist the Coast Guard in enforcing this security zone.

#### 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). No changes have been made to the rule.

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. There is ample room for vessels to navigate around the security zone and the Captain of the Port may allow vessels to enter the zone on a case-by-case basis with the express permission of the Captain of the Port of Philadelphia or their designated representative.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we 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 zone is limited in size and leaves ample room for vessels to navigate around the zone. The zone will not significantly impact commuter and passenger vessel traffic patterns; the vessels may be allowed to enter the zone

on a case-by-case basis, with the express permission of the Captain of the Port of Philadelphia or their designated representative.

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, as none were identified that will be affected by the final rule.

Vessel traffic counts indicate the waterway users will continue to have the same access to the waterway as in the past, with the exception of a small remote area surrounding the waterfront near the Three Mile Island Generating Station.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard Marine Safety Office Philadelphia in writing at the address under **ADDRESSES**.

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 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 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 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the order.

### 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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)(g), of Commandant Instruction M16475.1D, from further environmental documentation.

We have considered waterside access constraints around the security zone and have determined the public can safely transit the affected waterways outside the security zone, without significant impact on the environment.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, 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. 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. Add § 165.554 to read as follows.

### § 165.554 Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Three Mile Island Generating Station bounded by a line beginning at 40°09′14.74″ N, 076°43′40.77″ W; thence to 40°09′14.74″ N, 076°43′42.22″ W, thence to 40°09′16.67″ N, 076°43′42.22″ W, thence to 40°09′16.67″ N, 076°43′40.77″ W; thence back to the beginning point 40°09′14.74″ N, 076°43′40.77″ W. All coordinates reference Datum: NAD 1983.

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

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative 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. The Security Manager at Three Mile Island can be contacted at (717) 948–8208 or (717) 948–8039.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia, 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.

Dated: July 20, 2004.

**Jonathan D. Sarubbi,**

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

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**BILLING CODE 4910–15–P**