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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05-96-010]

RIN 2115-AE84

Regulated Navigation Area; Delaware Bay and River, Salem River, Christina River, and Schuylkill River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations governing a regulated navigation area on the Delaware Bay and River. The changes extend the current regulated navigation area to include the Salem, Christina, and Schuylkill Rivers between Trenton, NJ, and the Delaware Breakwater. The changes also establish new regulations governing vessel movement within the expanded regulated navigation area. Many of these requirements were previously imposed on a case-by-case basis through issuance of temporary rules and Captain of the Port Orders. The Coast Guard believes these changes will increase public awareness and improve navigation safety within the regulated navigation area.

EFFECTIVE DATE: This rule is effective on August 27, 1997.

ADDRESSES: The comments and other materials referred to in this preamble are available for inspection or copying at the Marine Safety Office Philadelphia, PA during normal working hours between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt Robert Hennessy, Assistant Chief, Port Operations Department (ACPOD), at the Marine Safety Office Philadelphia, PA, or by telephone at (215) 271-4883.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 7, 1996, the Coast Guard published a notice of proposed rulemaking entitled Regulated Navigation Area; Delaware Bay and River, Salem River, Christina River, and Schuylkill River in the **Federal Register** (61 FR 57599). The comment period ended February 5, 1997. The Coast Guard received two letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

This rule is adopted as part of an overall safety program implemented by the Captain of the Port, Philadelphia, PA to enhance the safe transportation of certain dangerous cargoes in the Captain of the Port zone.

Existing 33 CFR 165.510 established a regulated navigation area for the waters of the Delaware Bay and Delaware River south of the Delaware Memorial Bridge. It prohibits a vessel with a draft of greater than 55 feet from entering the regulated navigation area. It also prohibits oil transfer operations within the regulated navigation area except within specified anchorage grounds or with the authorization of the Captain of the Port. This rule expands the regulated navigation area, applies it when vessels transit with dangerous cargoes, and imposes operational restrictions on vessels operating within the regulated navigation area.

In the past, the Captain of the Port, Philadelphia, established a temporary safety zone whenever a vessel carrying a specified dangerous cargo transited the area. The temporary safety zone regulations routinely prohibited entry into the waters surrounding the vessel and facility without specific permission from the Coast Guard. The COTP imposed operating restrictions, similar to the measures contained in this final rule, as a condition of entry into the safety zone. The temporary rules were often issued on short notice and, as a result, may not have been timely published in the **Federal Register**.

To avoid the need to issue temporary rules and improve the public's knowledge of potential restrictions on navigation, the Coast Guard is amending 33 CFR 165.510. Definitions routinely included in the temporary rules are included in the final rule. The final rule applies to all vessels operating in the regulated navigation area, except vessels engaged in law enforcement, servicing aids to navigation, or surveying, maintaining or improving the waterways (e.g., dredges and survey vessels). The 55-foot draft limitation is retained, but a note is added indicating that the project depth of the Delaware River is 40 feet. Vessel to vessel oil transfer operations, excluding bunkering, will continue to be prohibited within the regulated navigation area except within designated anchorage grounds or with permission of the COTP.

Both vessels carrying dangerous cargoes and vessels operating in the vicinity of vessels carrying dangerous cargoes must comply with operational requirements and restrictions. The

master, owner, or operator of a vessel carrying dangerous cargo must give notice to the COTP at least 72 hours before entering or departing the regulated navigation area and at least 12 hours before any vessel movement within the regulated navigation area. The required notice must include a report of the vessel's propulsion and machinery status and, for foreign flag vessels, the notice must include any outstanding deficiencies identified by the flag state or classification society.

A vessel carrying dangerous cargo is prohibited from transiting within the regulated navigation area if visibility is or is expected to be less than two nautical miles. Anchoring is permitted only in an emergency or upon COTP approval. Unless the vessel has two separate and independent steering control systems with duplicate pilot house steering gear controls, the master, owner, or operator is required to maintain a manned watch within the steering gear compartment during any transit within the regulated navigation area. While at anchor, the master, owner, or operator is required to have the engines in a condition that full power would be available within five minutes whenever sustained winds exceeded 25 knots. If sustained winds reach or exceed 40 knots, the vessel's main engines must be on line. Each vessel is required to have emergency towing gear rigged while underway, at anchor, or moored. Transfer of dangerous cargo is also prohibited while a vessel is at anchor or bunkering.

Operational restrictions are also imposed on vessels operating in the vicinity of a vessel carrying dangerous cargo. While a vessel carrying dangerous cargo is underway, no vessel is permitted within 500 yards of either side or within 1000 yards of the bow or stern without permission of the COTP. No vessel is allowed within 100 yards of a moored or anchored vessel carrying dangerous cargo. Commercial vessels attending a vessel carrying dangerous cargo are allowed to transit within this area with permission from the master of the vessel carrying dangerous cargo. If permitted to enter, the vessel is required to maintain a continuous radio guard, operate at a "no wake" speed or the minimum speed to maintain steerage, and to proceed as otherwise directed by the COTP. No vessel is permitted to overtake a vessel carrying dangerous cargo unless the overtaking can be completed before reaching any bends in the channel and the masters or operators of both vessels clearly agree on arrangements for the overtaking.

Specific restrictions also apply to vessels operating above the C&D Canal.

A vessel carrying dangerous cargo is required to have a tug escort, and to the maximum extent possible, vessel masters or operators are required to avoid meeting situations on river bends.

This final rule includes a provision that the COTP will announce scheduled movements of vessels carrying dangerous cargoes via Broadcast Notices to Mariners. These broadcasts will not only alert the maritime public that restrictions will be in effect, but they will also allow mariners to plan activities to minimize the impact of the restrictions.

Discussion of Comments and Changes

Two respondents to the Notice of Proposed Rulemaking provided a number of specific comments on the proposed rule. One letter was from a company that operates barges which carry dangerous cargoes. The other letter was from the operator of a launch service.

One comment noted that the proposed rule, by incorporating the definition of dangerous cargoes provided in 33 CFR 160.203, would require barges carrying bulk cargoes listed in Table 1 of 46 CFR part 153 to adhere to the requirements of the NPRM. The Coast Guard's intention in this rulemaking was to establish a permanent rule to incorporate requirements previously imposed through issuance of temporary rules and Captain of the Port Orders. This rulemaking was not intended to expand the scope to apply restrictions to all barges carrying cargoes that were not previously subject to case-by-case restrictions. Therefore, for the purposes of this part, the definition of dangerous cargo excludes those substances listed in Table 1 of 46 CFR part 153 and referred to in § 160.203(d). Additionally, paragraph 510(f) of this rule has been changed to expressly not incorporate Table 1 of 46 CFR part 153.

Proposed § 165.510(b) defined COTP as Captain of the Port Philadelphia and any Coast Guard commissioned, warrant, or petty officer authorized to act on his or her behalf. One comment asked how the public would know that a commissioned, warrant or petty officer had been authorized to act on behalf of the COTP. Under existing Coast Guard policy, a commissioned, warrant, or petty officer is designated in writing to act on behalf of the COTP when he or she completes qualification requirements for various positions. A commissioned, warrant, or petty officer would not be assigned responsibilities onscene if he or she had not been delegated the necessary authority. However, if a member of the public has concerns about the authority behind a

specific request or order, he or she should request clarification.

One comment questioned the exemption in proposed § 165.510(c) for vessels engaged in law enforcement, servicing aids to navigation, dredging, or surveying, maintaining, or improving waterways. The commenter disagreed that law enforcement vessels, vessels servicing aids to navigation, and survey vessels within the Regulated Navigation Area should be exempt from this rule at all times. Although the Coast Guard understands this concern, the final rule has not been changed. The exemption applies only to a vessel actually engaged in one of the specified activities within the Regulated Navigation Area, and not when a vessel is merely transiting. Additionally, the Coast Guard does not believe that the hazard to navigation created by a vessel conducting surveys or engaged in dredging is such that it should always be required to discontinue its operations when a vessel carrying dangerous cargo is transiting the area. However, the Coast Guard will closely monitor this activity on a case-by-case basis, and may require a vessel which poses a particular risk to cease operations and maintain an appropriate safe distance. The Coast Guard also believes that nothing in this rule relieves any master from the general requirement to operate his or her vessel in a prudent manner at all times.

In § 165.510(d) of the NPRM, the Coast Guard proposed a requirement that a vessel with a draft greater than 55 feet obtain permission of the Captain of the Port prior to transiting the area between the southern boundary of the Regulated Navigation Area and the southern span of the Delaware Memorial Bridge. The Coast Guard received no comments on this paragraph. The Coast Guard believes, however, that the wording in the proposed paragraph is unnecessarily confusing, and therefore has changed that wording to more clearly state that a vessel with a draft greater than 55 feet may not enter the Regulated Navigation Area without obtaining permission of the Captain of the Port. Also, in § 165.510(d) of the NPRM, the Coast Guard proposed adding a Note stating that the project depth of the Delaware River is 40 feet. The project depth in parts of the Delaware River, such as Newbold Channel is less than 40 feet, however. Therefore, the Coast Guard has changed the Note to eliminate possible confusion.

In § 165.510(e) of the NPRM, the Coast Guard proposed a requirement to prohibit oil transfer operations between the southern boundary of the RNA and the southern span of the Delaware

Memorial Bridge except as authorized by the COTP or within the anchorage designated in 33 CFR 110.157(a)(1). The Coast Guard received no comments on this paragraph; however, after further consideration, the Coast Guard believes this requirement is unduly restrictive. As written, 165.510(e) prohibits oil transfer operations at fixed facilities, as well as all bunkering operations. This paragraph does not reflect the Coast Guard's intent to codify the current practice achieved through issuance of temporary safety zones. Therefore, the Coast Guard is amending § 165.510(e) to more precisely state that unless authorized by the COTP, no vessel to vessel oil transfer operations, excluding bunkering, may be conducted within the area between the southern boundary of the RNA and the southern span of the Delaware Memorial Bridge except within the anchorage ground designated in 33 CFR 110.157(a)(1).

In § 165.510(f)(6) of the NPRM, the Coast Guard proposed a requirement that a vessel carrying dangerous cargo and anchored within the regulated area have its main engines on five-minute standby when sustained winds are greater than 25 knots but less than 40 knots, and on line when sustained winds reached 40 knots or more. One comment suggested modifying this provision to require that engines be on five-minute standby when sustained winds are greater than 25 knots but less than 30 knots, on line when sustained winds are forecast to be greater than 30 knots but less than 40 knots, and that the vessel also have a pilot embarked and tug alongside whenever sustained winds of greater than 40 knots are forecast. The Coast Guard has carefully considered this comment, but has not changed the requirement in this final rule. The Coast Guard developed the proposed requirement after receiving input from the Philadelphia Maritime Advisory Committee and the Delaware Bay and River Pilots Association. Mariners must monitor weather forecasts in order to take the steps necessary to comply with this rule. Most vessels are capable of safely maintaining their positions at anchor or maneuvering as needed even if winds are 40 knots or greater. The Coast Guard will continue to monitor vessel and weather status. If a specific vessel poses a particular threat, the COTP may issue a COPT order requiring additional protective measures on a case-by-case basis. The COTP may also establish a temporary safety zone to limit vessel movement if severe weather, such as hurricane conditions, is forecast.

Another comment stated that the requirement in proposed § 165.510(g)

that passing vessels remain 500 yards from the sides and 1,000 yards from the bow or stern of a vessel carrying dangerous cargo would essentially halt all large commercial traffic during any transit of a vessel carrying dangerous cargo in most areas of the regulated area. The Coast Guard notes that a vessel may approach closer with COTP permission. It is not the Coast Guard's intent to stop all traffic within the port. The COTP may permit a vessel to enter within 500 yards from the sides and 1,000 yards from the bow or stern of a vessel carrying dangerous cargo if the masters or pilots of both vessels have coordinated safe passing arrangements. Therefore, the Coast Guard has not changed this provision in the final rule.

In § 165.510(g)(2)(ii) of the NPRM, the Coast Guard proposed a requirement that a master, owner, or operator of a vessel given permission to come or remain near a vessel carrying dangerous cargo under paragraph (g)(1) operate at a "no wake" speed or the minimum speed needed to maintain steerage, whichever is less. Although no comments were received on this paragraph, the Coast Guard believes that the wording in the proposed paragraph is unnecessarily confusing and could create an unsafe situation in the event that the "no wake" speed is less than the speed necessary to maintain steerage. Therefore, the Coast Guard has eliminated the phrase "whichever is less" from the final rule.

Section 165.510(h)(2) of the NPRM proposed additional requirements for vessels operating above the C&D Canal. The proposed paragraph required that a vessel carrying dangerous cargo and an oncoming vessel shall not meet at a relative speed greater than prudent under the prevailing weather conditions or 20 knots, whichever is less. The Coast Guard did not receive comments on this paragraph; however, upon further review, the Coast Guard believes that requiring vessels to maintain a relative speed of 20 knots or less is unnecessarily restrictive. The Coast Guard believes that basic seamanship and the rules of the road should dictate the relative speed of oncoming vessels. Therefore, the Coast Guard has eliminated the first clause of § 165.510(h)(2) which limits the speed of vessels. As amended, § 165.510(h)(2) will merely state that meeting situations shall be avoided on river bends to the maximum extent possible.

A comment also noted that many recreational vessels do not monitor marine frequencies. Therefore, recreational boaters may not be aware of a Broadcast Notice to Mariners concerning scheduled movements of a

vessel carrying dangerous cargo and the restrictions imposed by this rule. The Coast Guard agrees that many vessels do not monitor Broadcast Notices or follow other prudent navigation practices. However, failure to do so would not excuse a violation of this rule.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects 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 DOT is unnecessary. The practice of establishing a safety zone around a vessel loaded with certain dangerous cargoes, notably explosives and Liquefied Petroleum Gas, has been in effect for many years. Small and large companies with vessels operating in Philadelphia are aware of scheduled transits of vessels loaded with dangerous cargoes and adjust their vessel movements to minimize any economic impact. These restrictions have been implemented on a case-by-case basis in the form of Captain of the Port Orders or temporary safety zones for each transit. By establishing a permanent rule the Coast Guard will achieve economies in manpower and administrative time, provide the Port of Philadelphia with the widest dissemination of these precautionary measures, and minimize the potential dangers of these movements to the port community. Because this regulated navigation area is not expected to unduly impede the flow of traffic, the impact of this rule is expected to be minimal, and the Coast Guard believes that this rule will have only minimal economic impact.

Small Entities

The Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" included (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule merely codifies the Captain of the Port's past practices of issuing

temporary rules and Captain of the Port Orders when vessels carrying certain dangerous cargoes are transiting. Because those practices were conducted without adverse affects to small entities, the impact of this rule is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2e.(34) of Commandant Instruction M16475.1B (as revised by 61 FR 13563, March 27, 1996), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.510 is revised to read as follows:

§ 165.510 Delaware Bay and River, Salem River, Christina River and Schuylkill River—Regulated Navigation Area.

(a) *Regulated Navigation Area.* The following is a Regulated Navigation Area: The navigable waters of Delaware Bay and River, Salem River, Christina River, and Schuylkill River, in an area

bounded on the south by a line drawn across the entrance to the Delaware Bay between Cape May Light and Harbor of Refuge Light and then continuing to the northernmost extremity of Cape Henlopen, and bounded on the north by a line drawn across the Delaware River between Trenton, NJ and Morrisville, PA along the southern side of the U.S. Route 1 Bridge.

(b) *Definitions.* As used in this section:

COTP means the Captain of the Port, Philadelphia, PA and any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his or her behalf.

Dangerous Cargo means those cargoes listed in § 160.203 of this chapter when carried in bulk, but does not include cargoes listed in Table 1 of 46 CFR part 153.

Underway means that a vessel is not at anchor, made fast to the shore, or aground.

(c) *Applicability.* This section applies to any vessel operating within the Regulated Navigation Area, including a naval or public vessel, except a vessel engaged in:

(1) Law enforcement;
(2) Servicing aids to navigation; or
(3) Surveying, maintaining, or improving waters within the Regulated Navigation Area.

(d) *Draft limitation.* Unless otherwise authorized by the COTP, no vessel with a draft greater than 55 feet may enter this regulated navigation area.

Note: The project depth in many areas of the Regulated Navigation Area is less than 55 feet.

(e) *Oil transfer operations.* Unless otherwise authorized by the COTP, no vessel to vessel oil transfer operations, excluding bunkering, may be conducted within the area between the southern boundary of this regulated navigation area and the southern span of the Delaware Memorial Bridge except within the anchorage ground designated in 110.157(a)(1) of this chapter.

(f) *Requirements for vessels carrying dangerous cargoes.* The master, owner, or operator of a vessel carrying a dangerous cargo shall:

(1) Notify the COTP at least 72 hours before the vessel enters or departs the regulated navigation area and at least 12 hours before the vessel moves within the regulated navigation area. The notice must include a report of the vessel's propulsion and machinery status and, for foreign flag vessels, the notice must include any outstanding deficiencies identified by the vessel's flag state or classification society;

(2) Not enter, get or remain underway within the regulated navigation area if

visibility is or is expected to be less than two (2) miles. If during the transit visibility becomes less than two (2) miles, the vessel must seek safe anchorage and notify the COTP immediately;

(3) Not anchor in any area within the regulated navigation area unless in times of emergency or with COTP permission;

(4) Not transfer dangerous cargo while the vessel is at anchor or bunkering;

(5) Maintain a manned watch in the steering compartment whenever the vessel is underway within the regulated navigation area unless the vessel has two separate and independent steering control systems with duplicate pilothouse steering gear control systems which meet the requirements of 46 CFR 85.25–55;

(6) When anchored within the regulated navigation area and:

(i) Sustained winds are greater than 25 knots but less than 40 knots, ensure the main engines are ready to provide full power in five minutes or less; and

(ii) Sustained winds are 40 knots or over, ensure that the main engines are on line to immediately provide propulsion;

(7) While moored within the regulated navigation area, ensure that at least two wire cable mooring lines (firewarps) are rigged and ready for use as emergency towing hookups fore and aft on the outboard side of the vessel;

(8) While underway or anchored within the regulated navigation area, ensure that at least two wire cable mooring lines (firewarps) are rigged and ready for use as emergency towing hookups fore and aft on the vessel; and,

(9) Proceed as directed by the COTP.

(g) *Requirements for vessels operating in the vicinity of a vessel carrying dangerous cargoes.* (1) Except for a vessel that is attending a vessel carrying dangerous cargo with permission from the master of the vessel carrying dangerous cargo or a vessel that is anchored or moored at a marina, wharf, or pier, and which remains moored or at anchor, no vessel may, without the permission of the COTP:

(i) Come or remain within 500 yards of the port or starboard side or within 1,000 yards of the bow or stern of an underway vessel that is carrying dangerous cargo; or

(ii) Come or remain within 100 yards of a moored or anchored vessel carrying dangerous cargo.

(2) The master, owner, or operator of any vessel receiving permission under paragraph (g)(1) of this section shall:

(i) Maintain a continuous radio guard on VHF-FM channels 13 and 16;

(ii) Operate at "no wake" speed or the minimum speed needed to maintain steerage; and

(iii) Proceed as directed by the COTP.

(3) No vessel may overtake a vessel carrying dangerous cargoes unless the overtaking can be completed before reaching any bend in the channel. Before any overtaking, the pilots, masters or operators of both the overtaking vessel and the vessel being overtaken must clearly agree on the circumstances of the overtaking, including vessel speeds, time and location of overtaking.

(h) *Additional restrictions above the C&D Canal.* When operating on the Delaware River above the C&D Canal:

(1) A vessel carrying dangerous cargo must be escorted by at least one commercial tug; and

(2) Meeting situations shall be avoided on river bends to the maximum extent possible.

(i) The COTP will issue a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements during which the restrictions imposed by paragraphs (g) and (h) of this section will be in effect.

Dated: July 8, 1997.

Roger T. Rupe, Jr.,
Vice Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–97–019]

RIN 2115–AA97

Safety Zone Regulation; Naval Air Station Whidbey Island Air Show, Puget Sound, Washington

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Puget Sound from 11 a.m. (PDT) to 5 p.m. (PDT) July 26 and 27, 1997. The Captain of the Port Puget Sound, Seattle, Washington is taking the following action to safeguard watercraft and their occupants from the safety hazards associated with high performance aircraft conducting complex maneuvers at high speeds and low altitudes. The safety zone will encompass the area beginning at the shoreline at position latitude 48°20'20" N, longitude 122°41'20" W; thence to