

Dated: January 16, 2004.

**Jonathan D. Sarubbi,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-03-111]

RIN 1625-AA00

#### **Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ**

**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 Oyster Creek Generation 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 their designated representative. **DATES:** This rule is effective March 5, 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 CGD05-03-111, which is 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 Doreen Moore, Coast Guard Marine Safety Office Philadelphia, at (215) 271-4889.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

On September 15, 2003 we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ" (68 FR 53930). We received two letters commenting on this proposed rule. Both letters requested a public hearing. After considering the comments, the COTP Philadelphia decided not to hold a public hearing.

In addition the following temporary final rule was published in the **Federal Register**: "Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ" (68 FR 32643, June 2, 2003). That temporary final rule established a security zone around the Oyster Creek Generating Station, Forked River, Ocean County, NJ. 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 March 4, 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 03-01 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 a security zone is necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

##### **Discussion of Comments**

During the public comment period we received two letters. Both letters expressed concern that the security zone would exclude kayakers from access to paddle in specific areas on the Susquehanna River. Each respondent also requested a public hearing to discuss the proposed rule.

The Captain of the Port of Philadelphia has carefully weighed security concerns versus public access concerns in the decision to establish this security zone. The temporary and permanent security zone size and access to the areas were carefully considered and balanced against the increased need for safety and security outside the nuclear facility. The permanent zone will provide a clear area in which to detect persons or vessels while providing for traditional use outside of the security zone. This final rule remains unchanged from the proposed rules. A public hearing was considered, however given the number of requests and the need for increased security around the nuclear facility, no public hearing was held.

##### **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 remote small area surrounding the waterfront near the Oyster Creek Generation Station.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 affect 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.

#### **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 § 165.552 to read as follows.

### **§ 165.552 Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, New Jersey.**

(a) *Location.* The following area is a security zone: Starting at the south branch of the Forked River in the vicinity of the Oyster Creek Generation Station, bounded by a line beginning at 39°49'12.0" N, 074°12'13.0" W; thence to 39°48'39.7" N, 074°12'0" W; along the shoreline, thence to 39°48'40.0" N, 074°12'0.3" W; thence to 39°49'11.8" N, 074°12'10.5" W; thence back along the shoreline to the beginning point. 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 zones 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.

(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, 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.

Dated: January 23, 2004.

**Liam J. Slein,**

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

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **CFR Part 165**

[COTP PHILADELPHIA 03–005]

RIN 1625–AA00

### **Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule, change in effective period.

**SUMMARY:** The Coast Guard is continuing a temporary security zone on the waters adjacent to the Oyster Creek Generation Station. This zone will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

**DATES:** Effective January 24, 2004. Section 165.T05–091, added at 68 FR 32645, June 2, 2003, effective from 5 p.m. EDT on May 13, 2003, to 5 p.m. EST on January 24, 2004, as amended by this rule is effective through March 4, 2004.

**ADDRESSES:** Documents as indicated in this preamble are available as part of docket COTP Philadelphia 03–005 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 Doreen Moore, 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) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and

intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

It took longer to resolve issues related to the final rule, which appears elsewhere in today's **Federal Register**, that will create a permanent security zone in this area than we originally expected at the time the last temporary final rule was issued. This new temporary final rule is necessary because it would be contrary to public interest not to maintain a temporary safety and security zone until the final rule becomes effective March 5, 2004.

This security zone should have minimal impact on vessel transits because the security zone does not block the channel.

#### **Background and Purpose**

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington, DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Oyster Creek Generation Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants.

Currently, the need for this security zone still exists. This temporary rule will continue the effective period of the security zone through March 4, 2004 during the 30-day delayed effective period of a final rule published elsewhere in this issue of the **Federal Register**. That final rule, entitled "Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ", will become effective March 5, 2004 and will implement a permanent security zone surrounding the plant.

#### **Discussion of Rule**

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

#### **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