

gate of the Wilmington State Port at 34°11'29.578" N, 077°56'55.240" W (Point 16); proceeding South approximately 750 yards to the Southeast property corner of the Apex facility at 34°11'10.936" N, 077°57'04.798" W (Point 17); proceeding West to East bank of Cape Fear River at 34°11'11.092" N, 077°57'17.146" W (Point 18); proceeding South along East bank of Cape Fear River to the point of origins at 34°10'38.394" N, 077°57'16.248" W (Point 1).

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Wilmington, NC, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on her behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels with a need to enter or get passage within the security zone, must first request authorization from the Captain of the Port. The Captain of the Port's representative enforcing the zone can be contacted on VHF marine band radio, channel 16. The Captain of the Port can be contacted at (910) 772-2200 or toll free (877) 229-0770.

(3) The operator of any vessel within this security zone must:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port or his or her designated representative.

(ii) Proceed as directed by the Captain of the Port or his or her designated representative.

(d) *Effective period.* This section is effective from January 15, 2004, to June 13, 2004.

Dated: January 15, 2004.

**Jane M. Hartley,**

*Captain, U.S. Coast Guard, Captain of the Port, Wilmington, North Carolina.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Juan 03-176]

RIN 1625-AA00

#### Security Zone; St. Croix, United States Virgin Islands

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is re-establishing a temporary security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands. This security zone extends 3 miles seaward from the HOVENSA facility waterfront area along the south coast of the island of St. Croix, U.S. Virgin Islands. All vessels must receive permission from the U.S. Coast Guard Captain of the Port San Juan to entering this temporary security zone. This security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts.

**DATES:** This rule is effective from 11:59 p.m. on December 24, 2003, through 11:59 p.m. on April 15, 2004. Comments and related material must reach the Coast Guard on or before April 12, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket [COTP San Juan 03-176] and will be available for inspection or copying at Marine Safety Office San Juan between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays. Marine Safety Office San Juan, is located in the RODVAL Bldg, San Martin St. 90 Ste 400, Guaynabo, PR 00968. Marine Safety Office San Juan maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** LT Fred Meadows, Marine Safety Office San Juan, Puerto Rico at (787) 706-2440.

#### 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 rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Similar regulations were established on December 19, 2001, and published in the **Federal Register** (67 FR 2332, January 17, 2002); and again on September 13, 2002 (67 FR 57952, September 13, 2002), on March 18, 2003 (67 FR 22296, April 28, 2003); and on June 30, 2003 (67 FR 41081, July 10, 2003). However, these regulations have expired—on June 15, 2002; December 15, 2002; June 15, 2003; and December

15, 2003, respectively. We did not receive any comments on these regulations.

The Captain of the Port San Juan has determined that due to the continued security risks, the nature of the HOVENSA facility, recent increases in the Homeland Security Advisory System level and maritime security level, this rule is needed to ensure the safety and security of this facility. The Coast Guard intends to publish a notice of proposed rulemaking to propose making this temporary rule a final rule.

#### Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you submit a comment, please include your name and address, identify the docket number for this rulemaking (COTP San Juan 03-176), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying to the address indicated in **ADDRESSES**. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

#### Background and Purpose

Based on the September 11, 2001, terrorist attacks and recent increases in maritime security levels, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels without a scheduled arrival from coming within 3 miles of the HOVENSA facility unless specifically permitted by the Captain of the Port San Juan, his designated representative, or the HOVENSA Facility Port Captain. The Captain of the Port San Juan can be reached through

the Coast Guard Greater Antilles Section Command Center via VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289-2040, 24 hours a day, 7 days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692-3488, 24 hours a day, 7 days a week.

The temporary security zone around the HOVENSA facility is outlined by the following coordinates: 64°45'09" West, 17°41'32" North, 64°43'36" West, 17°38'30" North, 64°43'36" West, 17°38'30" North and 64°43'06" West, 17°38'42" North.

#### 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) because this zone covers an area that is not typically used by commercial vessel traffic, including fishermen, and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include 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.

This rule may affect the following entities, some of which may be small entities: owners of small charter fishing or diving operations that operate near the HOVENSA facility. 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 because this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it,

please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 entity 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 proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

#### Energy Effects

We have analyzed this proposed 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 proposed rule under Commandant Instruction M16475.ID, 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 the Instruction, from further environmental documentation. A draft “Environmental Analysis Check List” and a draft “Categorical Exclusion Determination” (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### 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. A new section 165.T07–176 is added to read as follows:

#### § 165.T07–176 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Location.* The following area is a security zone: All waters from surface to bottom, 3 miles seaward of the HOVENSA facility waterfront outlined by the following coordinates:

Latitude	Longitude
64°45'09" West .....	17°41'32" North.
64°43'36" West .....	17°38'30" North.
64°43'36" West .....	17°38'30" North.
64°43'06" West .....	17°38'42" North.

(b) *Regulations.* Under § 165.33, with the exception of vessels with scheduled arrivals to the HOVENSA Facility, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port San Juan or a Coast Guard commissioned, warrant, or petty officer designated by him, or the HOVENSA Facility Port Captain. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz). The Captain of the Port San Juan can be reached through the Greater Antilles Section Command

Center via VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, 7 days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, 7 days a week.

(c) *Effective period.* This section is effective from 11:59 p.m. on December 24, 2003, through 11:59 p.m. on April 15, 2004.

Dated: December 24, 2003.

**W.J. Uberti,**

*Captain, U.S. Coast Guard, Captain of the Port, San Juan.*

[FR Doc. 04–2749 Filed 2–9–04; 8:45 am]

**BILLING CODE 4910–15–P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

#### 33 CFR Part 165

[COTP Philadelphia 03–004]

**RIN 1625–AA00**

#### Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, PA

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard is continuing the effective period of the temporary security zone on the waters adjacent to the Limerick Generating Station. This will protect the safety and security of the generating station from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the station.

**DATES:** Effective January 16, 2004, § 165.T05–090, originally added at 68 FR 33386, June 4, 2003, effective from 5 p.m. e.d.t. on May 13, 2003, to 5 p.m. e.s.t. on January 24, 2004, is reinstated and is effective through 11:59 p.m. (e.s.t.) on February 29, 2004.

**ADDRESSES:** Documents as indicated in this preamble are available as part of docket COTP Philadelphia 03–004 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 rule. 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 rule 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.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to continue to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits because the security zone does not block the channel.

On September 16, 2003, we published a notice of proposed rulemaking (68 FR 53928) to create a permanent security zone in the same area this temporary final rule covers. It is taking longer to resolve issues related to the final rule than originally expected at the time the first temporary final rule was issued (68 FR 33386, June 4, 2003). Our extension of the effective period of the temporary security zone is intended to provide the Coast Guard with enough time to complete the rulemaking for a permanent zone without an interruption in the protection provided at the site by the temporary security zone.

##### 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 Limerick Generating Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the generating station. As noted, the Coast Guard has proposed to establish a permanent security zone that would control waterside access to the station.

##### Discussion of Rule

This temporary rule will extend the effective period of the security zone from 5 p.m. (EST) on January 24, 2004 to 11:59 p.m. (EST) on February 29, 2004. No person or vessel may enter or remain in the prescribed security zone