

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[CGD05-01-071]

RIN 2115-AA97

Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD**AGENCY:** Coast Guard, DOT.**ACTION:** Temporary final rule; change of effective period; request for comments.

SUMMARY: The Coast Guard is revising the effective period and requesting comments for a temporary security zone in the waters of the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant in Calvert County, Maryland. This security zone is necessary to help ensure public safety and security. The security zone will prohibit vessels from entering a well-defined area around Calvert Cliffs nuclear power plant.

DATES: The amendment to § 165. T05-071 (d) in this rule is effective at 5 p.m. on September 30, 2002. Section 165. T05-071, added at 67 FR 9205, February 28, 2002, effective January 9, 2002, to 5 p.m. June 15, 2002, and amended at 67 FR 41177, June 17, 2002, extending the effective period from June 17, 2002 to 5 p.m. September 30, 2002, as amended in this rule, is extended in effect to 5 p.m. on March 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05-01-071 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Building 70, Baltimore, Maryland 21226-1791, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dulani Woods, Port Safety and Security, Activities Baltimore, at (410) 576-2513.

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 an NPRM. When we promulgated the rule we intended to either allow it to expire on June 15, 2002, or to cancel it if we made permanent changes before that date. We requested comments from the public and to date have not received any. In 67 FR 41177, June 17, 2002, we extended the effective period to September 30, 2002, to ensure the security of this

facility and the safety of the public while determining whether a permanent rule is warranted. We have not determined whether a permanent rule is necessary; however, if we determine that a permanent rule is warranted, we will follow normal notice and comment rulemaking procedures, and a final rule should be published before March 31, 2003. Continuing the temporary rule in effect while considering promulgation of a permanent rule will help to ensure the security of this facility and the safety of the public during that period.

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**. It is not practicable to publish an NPRM because the security of the facility and the safety of the public needs to continue.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without engaging in the notice of proposed rulemaking process, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size, scope and duration of the Regulated Navigation Areas, safety zones and security zones in order to minimize unnecessary burdens on waterway users. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05-01-071], 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 8 1/2 by 11 inches, suitable for copying. 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 rule in view of them.

Background and Purpose

Due to the terrorist attacks on New York City, New York, and Washington DC, on September 11, 2001 and continued warnings from national security and intelligence officials that future terrorist attacks are possible, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to Calvert Cliffs Nuclear Power Plant. On October 3, 2001, Constellation Nuclear-Calvert Cliffs Nuclear Power Plant requested a limited access area to reduce the

potential threat that may be posed by vessels that approach the power plant.

On February 28, 2002, the Coast Guard published a temporary final rule entitled "Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD," in the **Federal Register** (67 FR 9203). The temporary rule established a security zone around the Calvert Cliffs Nuclear Power Plant.

There is a continuing need for the protection of the plant. The initial extension of the temporary security zone surrounding the plant was only effective to 5 p.m. on September 30, 2002. As a result, the Coast Guard is further extending the effective date of the rule to 5 p.m. on March 31, 2003. There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone.

Regulatory Evaluation

This temporary 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 Transportation (DOT) (44 FR 11040; February 26, 1979). We expect 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. Vessels may transit around the security zone and may be permitted within the security zone with the approval of the Captain of the Port or his or her designated representative.

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.

This rule was not preceded by a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities. This rule will affect the

following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor near the Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, Maryland.

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. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the office listed under **ADDRESSES**. In your comment, explain why you think it qualified 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 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 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 Security 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. 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 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 considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying 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. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. In temporary § 165.T05-071, revise paragraph (d) to read as follows:

§ 165.T05-071 Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD.

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(d) *Effective period.* This section is effective from 5 p.m. on September 30, 2002 to 5 p.m. on March 31, 2003.

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Dated: September 17, 2002.

R. B. Peoples,
Captain, Coast Guard, Captain of the Port, Baltimore, Maryland.

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