

thresholds on an annual basis, the number of HSR-reportable transactions has *decreased*.

I want to commend agency staff for their work in identifying potential blind spots in the premerger reporting regime. I also want to thank state legislatures and state attorneys general for enacting and implementing their own premerger notification laws to fill in some of these gaps. For example, a new law in State of Washington has taken effect, which requires advance notice of any transactions in the health care sector, where many problematic mergers fall below the radar.<sup>6</sup>

As we conduct this examination of the HSR Act, we should identify areas where laws may need to be changed or updated, especially when we cannot fill those gaps through amendments to our rules. For example, we may need to pursue reforms to ensure that “roll ups” are reported, where a buyer might acquire a large number of small companies that may not be individually reportable. We may also need to look carefully at the length of the waiting period, to determine if it is long enough to conduct a thorough investigation. I look forward to reviewing the input to these two rulemaking notices, so that our approach reflects market realities.

### Statement of Commissioner Rebecca Kelly Slaughter

September 18, 2020

Today, the Commission voted to advance two proposals with respect to our HSR premerger notification rules. I support the broad solicitation of input in the Advance Notice of Proposed Rulemaking and the proposed aggregation provisions in the Notice of Proposed Rulemaking (NPRM). But I oppose provisions in the NPRM that would broaden the categories of transactions exempt from filing HSR notice.

I share the concerns Commissioner Chopra articulated, and write separately only to add a few points. I share the general view that we should do what we can to right-size our HSR requirements. We generally benefit when the universe of transactions that are required to file under HSR matches as closely as possible the universe of transactions that are competitively problematic. Too many filings on non-problematic transactions are an unnecessary resource drain for the agency, and too few filings on problematic transactions clearly would allow anticompetitive acquisitions to proceed unnoticed and unchallenged. I also generally agree that transaction size (the main trigger for HSR filing under current law) is not the only or even necessarily the best indicator of competitive significance.

However, I am concerned about the expanded *de minimis* exemptions in the proposal released today for two reasons: Its broadening of the black box of unseen transactions and its effect on corporate governance.

Commissioner Phillips is correct that, of the filings the agency has reviewed of sub-10% acquisitions, none have led to enforcement action. But we cannot conclude that sub-10% acquisitions could never be problematic, because we do not know if any problematic transactions were deterred from consummation for fear of disclosures that are required in a filing, nor do we know how many might fall into that category. I worry that adding exemptions broadens the category of transactions outside of the agencies’ view, and therefore share Commissioner Chopra’s preference that the agency consider something other than a full exemption.

My other concern is that expanding the *de minimis* exemptions will have profound policy effects primarily in an area outside of the FTC’s particular expertise and jurisdiction: Corporate governance. Commissioner Phillips in his statement points out the ways in which the current HSR filing requirement for non-passive acquisitions can chill investors. He notes the rules around HSR may lead “investors to hold off, to keep quiet, and to hide what they are doing. They are less likely to pressure management, or share ideas, dampening operational and financial improvement—and, ultimately, competition.” Although I have not seen evidence to support his conclusion about the effect on competition, the evidence we have seen, even anecdotally, supports his assertions about investor behavior. It follows, therefore, that expanding HSR exemptions may likely change investor incentives and behavior.

These changes may ultimately be a good thing as a matter of public policy, and they might not be; the concern for me is that they would effect a public policy goal outside the realm of antitrust, and I am hesitant for the FTC unilaterally to enact rules outside the scope of our primary authority. I certainly understand that the rules as they exist today have a public policy effect outside antitrust, but they are the rules that we have, and disrupting the status quo is something that should be done only after careful consideration of and in consultation with experts on corporate governance, investor behavior, and securities law and policy.

So, I welcome comments on this NPRM from those in the corporate governance and securities community, and experts on investor behavior, to help us better understand the implications of such a change—including whether it would, as Commissioner Phillips asserts, actually improve competition.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2020–0630]

RIN 1625–AA00

### Safety Zone; Bahia de Ponce, Ponce, PR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a permanent safety zone for certain waters of the Bahia de Ponce, Ponce, Puerto Rico. This action is necessary to provide for the safety of life on these navigable waters during ship-to-ship liquefied natural gas transfer operations between liquefied gas carriers. This proposed rulemaking would prohibit persons and vessels from being in the safety zone when activated unless authorized by the Captain of the Port San Juan or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 31, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG–2020–0630 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Natallia Lopez, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2380, email [Natallia.M.Lopez@uscg.mil](mailto:Natallia.M.Lopez@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
LG Liquefied Gas  
LNG Liquefied Natural Gas  
NPRM Notice of proposed rulemaking  
PR Puerto Rico  
§ Section  
U.S.C. United States Code

<sup>6</sup> See Healthcare Transaction Notification Requirement, WASH. STATE OFF. OF THE ATT’Y GEN. (last visited Sept. 16, 2020), <https://www.atg.wa.gov/healthcare-transactions-notification-requirement>; see also S.H.B. 1607, 66th Leg., Reg. Sess. (Wash. 2019).

## II. Background, Purpose, and Legal Basis

On April 20, 2020, New Fortress Energy submitted a request to begin conducting ship-to-ship liquefied natural gas (LNG) transfer operations in the approximate location of three nautical miles south of Ponce, Puerto Rico (PR). Coast Guard Sector San Juan engaged with local stakeholders and determined the proposed location could accommodate regular anchoring and ship-to-ship LNG transfer operations between liquefied gas (LG) carriers. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with ship-to-ship LNG transfer operations between LG carriers would be a safety concern for anyone within 100-yards of the location of the transfer operations.

The purpose of this rulemaking is to establish a permanent safety zone to ensure the safety of vessels and the navigable waters during ship-to-ship LNG transfer operations between LG carriers. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

## III. Discussion of Proposed Rule

The COTP is proposing to establish a permanent safety zone in Bahía de Ponce, Ponce, PR where New Fortress Energy would be conducting ship-to-ship LNG transfer operations. The proposed rule would consist of a 100-yard safety zone in a location approximately three nautical miles south of Ponce, PR, while LNG transfer operations are being conducted. No vessel or person would be permitted to enter the safety zone when activated without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive

Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and restrictions of the safety zone. The safety zone required for these operations is 100 yards, making the safety zone limited in size. The safety zone is limited to a location approximately three nautical miles south of Ponce, PR, making the zone limited in location. Additionally, the safety zone will be enforced only while LNG transfer operations are being conducted, making it limited in duration. Vessels will be permitted to enter the safety zone when ship-to-ship transfer operations are not being conducted, limiting the restrictions associated with the safety zone.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

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 this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast

Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A proposed rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. 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 (adjusted for inflation) 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.

### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy

Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone during ship-to-ship LNG transfer operations lasting approximately 24 hours that would prohibit entry within 100 yards of the proposed location of the transfer operations. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking

System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### 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 is proposing to amend 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:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.788 to read as follows:

#### § 165.788 Safety Zone; Bahia de San Juan, Ponce, Puerto Rico.

(a) *Regulated area.* A safety zone is established in the following area: The waters around liquefied gas carriers conducting ship-to-ship liquefied natural gas transfer operations in an area 100-yards around each vessel in the approximate position 17°54'20" N, 066°35'6" W. All coordinates are North American Datum 1983.

(b) *Regulations.* (1) No person or vessel may enter, transit or remain in the safety zone unless authorized by the Captain of the Port, San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated Coast Guard commissioned, warrant, or petty officer.

(2) Vessels encountering emergencies, which require transit through the safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(3) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787–289–2041. The Coast Guard Patrol Commander enforcing the

safety zone can be contacted on VHF–FM channels 16 and 22A.

(4) Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the safety zones will be in effect by providing advance notice of scheduled ship-to-ship liquefied natural gas transfer operations of liquefied gas carriers via a Marine Broadcast Notice to Mariners.

(5) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: November 3, 2020.

G.H. Magee,

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

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#### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

#### 36 CFR Parts 1224, 1225, and 1236

[FDMS No. NARA–20–0006; NARA–2021–001]

RIN 3095–AB99

#### Federal Records Management: Digitizing Permanent Records and Reviewing Records Schedules

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend our electronic records management regulations to add a subpart containing standards for digitizing permanent Federal records so that agencies may dispose of the original source records, where appropriate and in accordance with the Federal Records Act amendments of 2014. We are also making a minor revision to our records schedule review provisions to establish a requirement for agencies to review, every five years, all records schedules that are ten years old and older, based on the date the National Archives and Records Administration (NARA) approved the schedule.

**DATES:** Submit comments on or before February 1, 2021.

**ADDRESSES:** You may submit comments, identified by RIN 3095–AB99, by either of the following methods: