

(5) Then proceed north along Bishop Cut to White Slough, T3N, R5E (Terminus, Calif. map);

(6) Then proceed west along White Slough to an unnamed drainage canal on Terminus Tract, across the slough from a marked pumping station on King Island, T3N, R5E (Terminus, Calif. map);

(7) Then proceed straight northwest on the Terminus Tract to the south end of Peatland Road and follow it north to its intersection with State Route 12, T3N, R5E (Terminus, Calif. map);

(8) Then proceed west 0.2 mile on State Route 12 to its intersection with an unnamed unimproved road at BM-8, and continue straight northwest on the Terminus Tract to the marked siphon on the south side of Sycamore Slough, T3N, R5E (ending on the Thornton, Calif. map);

(9) Then proceed in a straight line north-to-northeast across Brack Tract, Hog Slough and Canal Ranch to the line's intersection with Beaver Slough near the 90-degree east turn of an unnamed light duty road, west of a small cluster of buildings, T4N, R5E (Thornton, Calif. map);

(10) Then proceed west along Beaver Slough to its intersection with the South Mokelumne River, following the river north and east to its intersection with Interstate 5 (marked as under construction), T5N, R5E (ending on the Bruceville, Calif. map);

(11) Then proceed northwest along Interstate 5 to its intersection with an unnamed road, locally known as Hood-Franklin Road.

(12) From Interstate 5, proceed east on Hood-Franklin Road to its intersection with Franklin Boulevard, Section 17, T6N, R5E (ending on the Florin, Calif. map);

(13) Proceed generally north along Franklin Boulevard to its intersection with Sims Road and a section line running due east marking the northern boundary of Section 28, T7N, R5E (Florin, Calif. map).

(14) Follow this section line due east to its junction with Sheldon Road and then proceed east along Sheldon Road to its intersection with the Central California Traction Co. Railroad (beginning on the Florin, Calif. map and ending on the Elk Grove, Calif. map);

(15) Proceed southeast along the Central California Traction Co. Railroad to its intersection with Grant Line Road (Elk Grove, Calif. map);

(16) Then northeast along Grant Line Road to its intersection with State Highway 16 (beginning on the Elk Grove, Calif. map, passing through the Sloughhouse, Calif. map, and ending on the Buffalo Creek, Calif. map);

(17) Proceed southeast along State Highway 16 to its intersection with Deer Creek (ending on the Sloughhouse, Calif. map);

(18) Then proceed generally northeast along Deer Creek to its intersection with the eastern boundary of Sacramento County (beginning on the Sloughhouse, Calif. map, passing through the Buffalo Creek, Calif. map, and ending on the Folsom SE, Calif. map); and

(19) Proceed generally south along the eastern boundary of Sacramento County to the meeting point of Sacramento, Amador, and San Joaquin Counties (beginning on the Folsom SE, Calif. map, passing through the Carbondale, Calif. map, and ending on the Goose Creek, Calif. map); and

(20) Then proceed generally south-southeast along the eastern boundary of San Joaquin County to the point of beginning (beginning on the Goose Creek, Calif. map, passing through the Clements, Calif. and Wallace, Calif. maps, and ending on the Valley Springs SW, Calif. map).

Signed: July 17, 2002.

**Bradley A. Buckles,**  
*Director.*

Approved: August 8, 2002.

**Timothy E. Skud,**  
*Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).*  
[FR Doc. 02-22383 Filed 9-3-02; 8:45 am]  
**BILLING CODE 4810-31-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-02-045]

RIN 2115-AA97

#### Safety and Security Zones; Portsmouth Harbor, Portsmouth, NH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing safety and security zones 1 mile ahead, ½ mile astern, and 1000-yards on either side of any vessel capable of carrying Liquefied Petroleum Gas (LPG) while within, or transiting, the Portland, Maine, Captain of the Port zone. This rule also establishes safety and security zones of 500 yards around any LPG vessel while it is moored at the LPG receiving facility located on the Piscataqua River in Newington, New Hampshire. Entry into or movement within these zones, without the express permission of the Captain of the Port,

Portland, Maine or his authorized patrol representative, is strictly prohibited.

**DATES:** This rule is effective October 4, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01-02-045 and are available for inspection or copying at Marine Safety Office Portland, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) R.F. Pigeon, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780-3251.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On May 23, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zones; Portsmouth Harbor, Portsmouth, New Hampshire" in the **Federal Register** (67 FR 36122). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

This final rule will make permanent a temporary final rule (TFR) entitled "Safety and Security Zones; LPG Transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone" published on November 20, 2001 in the **Federal Register** (66 FR 58064). That TFR had an effective period from November 9, 2001 through June 21, 2002. On May 8, 2002, we published an extension to that TFR entitled "Safety and Security Zones; Portsmouth Harbor, Portsmouth, New Hampshire" in the **Federal Register** (67 FR 30809). This extension extended the effective period until August 15, 2002.

##### Background and Purpose

The September 11, 2001 terrorist attacks on New York and Washington, DC inflicted catastrophic human casualties and property damage. National security and intelligence officials continue to warn that future terrorist attacks are possible. Due to these heightened security concerns, safety and security zones are prudent for Liquefied Petroleum Gas (LPG) tank vessels, which may be likely targets of terrorist attacks due to the flammable nature of LPG and the serious impact on the Port of Portsmouth, New Hampshire and surrounding areas that may be incurred if an LPG vessel was subjected to a terrorist attack.

This final rule will revise a current safety zone for transits of tank vessels

carrying Liquefied Petroleum Gas in Portsmouth Harbor, Portsmouth, New Hampshire. The current rule will be replaced in whole by this final rule. Title 33 CFR 165.103, entitled "Safety Zone: Portsmouth Harbor, Portsmouth, New Hampshire", currently provides for a safety zone during the transit of loaded LPG vessels as follows: the waters bounded by the limits of the Piscataqua River Channel and extending 1000-yards ahead and 500-yards astern of tank vessels carrying LPG while the vessel transits Bigelow Bight, Portsmouth Harbor, and the Piscataqua River to the LPG receiving facility at Newington, New Hampshire until the vessel is safely moored and while the vessel transits outbound from the receiving facility through the Piscataqua River, Portsmouth Harbor and Bigelow Bight until the vessel passes the Gunboat Shoal Lighted Bell Buoy "1" (LLNR 185). Currently, Title 33 CFR 165.103 recognizes the safety concerns with transits of large tank vessels, but is inadequate to protect LPG vessels from possible terrorist attack, sabotage or other subversive acts.

In comparison to 33 CFR 165.103, this final rule will provide increased protection for LPG vessels as follows: it establishes 500-yard safety and security zones around LPG vessels while moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire. It also provides continuous protection for LPG vessels by establishing safety and security zones 1 mile ahead, ½ mile astern, and 1000-yards on each side of LPG vessels anytime a vessel is within the waters of the Portland, Maine, Captain of the Port zone, as defined in 33 CFR 3.05–15, rather than limiting the protection to vessels carrying LPG that are transiting to and from the facility. It also extends the zones to 1000 yards on either side of the vessel rather than limiting the zone to the limits of the Piscataqua River Channel.

The increased protection provided in this final rule also recognizes the safety concerns associated with an unloaded LPG vessel. Currently, 33 CFR 165.103 only establishes a safety zone around a loaded LPG tank vessel or while the vessel is transferring its cargo. This final rule establishes safety and security zones around any LPG vessel, loaded or unloaded, any time a LPG vessel is located in the Portland, Maine, Captain of the Port zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. To the extent that it is applicable, under the Ports and Waterways Safety Act (33 U.S.C.S 1221 *et seq.*, and 46 U.S.C.S. 301a) navigable waters of the United

States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law. These zones provide necessary protection to unloaded vessels, which continue to pose a safety/security hazard due to ignition of the vapor material. This final rule also recognizes the continued need for safety zones around LPG vessels, which are necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a large tank vessel.

No person or vessel may enter or remain in these safety and security zones at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. To the extent that each is applicable, these regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed \$25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$250,000), in rem liability against the offending vessel, and license sanctions.

#### Discussion of Comments and Changes

The Coast Guard received no comments for this rulemaking. Three changes have been made to the proposed rule in this final rulemaking: (1) by revising paragraph (a) to include the reference to the definition of the Portland, Maine, Captain of the Port Zone (2) by adding paragraph (b) defining navigable waters for this section and (3) by adding paragraph (d) regarding notifications.

#### Regulatory Evaluation

This proposed 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). 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 for the following reasons: These zones should have minimal impact on the users of the Portland, Maine, Captain of the Port zone, Bigelow Bight, Portsmouth Harbor and the Piscataqua River, as LPG vessel transits are infrequent. Vessels have ample water to transit around the zones while LPG vessels are transiting in Bigelow Bight, Portsmouth Harbor and the Piscataqua River. The zones established while the vessel is transiting are moving safety and security zones, allowing vessels to transit ahead, behind, or after passage of an LPG vessel. Public notifications will be made prior to an LPG transit via telephone and/or marine information broadcasts.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we have considered whether this proposal 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.

For the reasons addressed under Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 contains no collection of information requirements 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 section 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.

#### 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 M16475.1D, 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 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), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. Revise 33 CFR 165.103 to read as follows:

#### § 165.103 Safety and Security Zones; LPG Vessel Transits in Portland, Maine, Captain of the Port Zone, Portsmouth Harbor, Portsmouth, New Hampshire.

(a) *Location.* The following areas are safety and security zones: (1) Except as provided in paragraph (a) (2) of this section, all navigable waters of the Portland, Maine, Captain of the Port zone, as defined in 33 CFR 3.05-15, one mile ahead, one half mile astern, and 1000-yards on either side of any Liquefied Petroleum Gas vessel.

(2) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas (LPG) vessel while it is moored at the LPG receiving facility on the Piscataqua River, Newton, New Hampshire.

(b) *Definitions.* For purposes of this section, navigable waters of the United States includes all waters of the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988. Presidential Proclamation No. 5928 of December 27, 1988 declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States.

(c) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Captain of the Port (COTP), Portland, Maine.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the Captain of the Port.

(3) No person may swim upon or below the surface of the water within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Portland, Maine or his authorized patrol representative.

(d) The Captain of the Port will notify the maritime community and local agencies of periods during which these safety and security zones will be in effect by providing notice of arrivals and departures of LPG vessels via the telephone and/or Marine Safety Information Radio Broadcasts.

Dated: August 26, 2002.

**M.P. O'Malley,**

*Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.*

[FR Doc. 02-22493 Filed 9-3-02; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-02-090]

RIN 2115-AE84

#### Safety Zone; East River, Manhattan, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in a portion of the waters of the East River, Western Channel, between Manhattan and Roosevelt Island, NY. This action is necessary to provide for the safety of construction crews and motorists during rehabilitation of a portion of the Franklin Delano Roosevelt (FDR) Drive between East 56th Street and East 63rd Street in Manhattan, NY. This action is intended to prevent vessels from the hazards associated with construction, operation and disassembly of a temporary Outboard Detour Roadway and its protective fendering system, and to minimize the risk of allision with those structures, once constructed, by restricting marine traffic within the zone.

**DATES:** This rule is effective at 7 a.m. on September 16, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01-02-090) and are available for inspection or copying at room 205, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, NY 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Luis E. Martinez, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354-4193.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On July 26, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; East River, Manhattan, NY", in the **Federal Register** (67 FR 48832). We received no letters commenting on the proposed rule. No

public hearing was requested, and none was held.

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**. Due to the date the final construction and vessel restriction plans were completed and reviewed by the Port of NY/NJ Harbor Operations Committee and Harbor Pilots, there was insufficient time to draft and publish both an NPRM and final rule more than 30 days before the effective date. Rather than shorten the NPRM comment period, our NPRM advised the public that the rule would take effect on or about September 1, 2002—less than 30 days following its anticipated publication. Further, the safety zone is intended to protect vessels from the hazards associated with construction, operation and disassembly of a temporary Outboard Detour Roadway and its protective fendering system, and to minimize the risk of allision with those structures, once constructed, by restricting marine traffic within the zone. Any delay encountered in this rule's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect construction crews and motorists during rehabilitation of a portion of the FDR Drive between East 56th Street and East 63rd Street in Manhattan, NY.

##### Background and Purpose

The New York State Department of Transportation (NYSDOT) is undertaking the rehabilitation of the FDR Drive in Manhattan, NY. The project is scheduled to begin on September 16, 2002 and to continue until approximately June 2007. It will include the building of a temporary Outboard Detour Roadway (causeway) adjacent to the northbound lanes of a portion of the FDR Drive that will provide three lanes of motor vehicle traffic over the Western Channel of the East River between East 56th Street and East 63rd Street in Manhattan.

The temporary Outboard Detour Roadway will be protected from marine traffic interference by a fendering system positioned adjacent to and just outside the western edge of the navigable channel in the East River's Western Channel. The fendering system will run the length of the Outboard Detour Roadway. It is designed to withstand an allision by a vessel displacing 38,000 long tons (38,610 metric tons) striking at a speed of 6.8 knots and a 7.5 degree angle of approach.

The rule will exclude all vessels from the immediate vicinity of the Outboard Detour Roadway during the construction, operation and disassembly of the structure and its protective fendering system. By excluding marine traffic, the zone will protect maritime users from the hazards associated with the construction, operation and disassembly of those structures and protect Outboard Detour Roadway users from the risk of vessel allision or interference with that structure. The safety zone will commence on September 16, 2002.

In order to provide further protection for roadway users, we contemplate the subsequent establishment of a Regulated Navigation Area (RNA) in the Western Channel of the East River between 23rd Street, Manhattan (Poorhouse Flats Range) and East 96th Street, Manhattan (Hells Gate). No vessel with a displacement of greater than 38,000 long tons would be permitted to enter the RNA without tugboat assistance. That RNA will be the subject of separate rulemaking process as we draw closer to the projected opening of the Outboard Detour Roadway in 2004.

##### Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

##### 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 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 10(e) of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant as it will not prevent maritime traffic from navigating the East River, Western Channel. The safety zone merely prevents vessels from entering a relatively small area of water west of the navigable channel to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.