

(c) The Granite Avenue Bridge need not open for the passage of vessel traffic.

Dated: November 8, 2001.

**G.N. Naccara,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-01-192]

RIN 2115-AA97

#### **Safety and Security Zones; LPG Transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing safety and security zones in the Captain of the Port, Portland, Maine zone, 1 mile ahead, 1/2 mile astern, and 1000-yards on either side of any vessel capable of carrying Liquefied Petroleum Gas (LPG). This rulemaking 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 or movement within these zones by any vessel of any description, 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 from November 9, 2001 through June 21, 2002.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) W. W. Gough, Chief, Ports and Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780-3251.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Due to the catastrophic nature and extent of

damage realized from terrorist attacks on the World Trade Center and Pentagon on September 11, 2001 this rulemaking is urgently necessary to protect the national security interests of the United States against future potential terrorist strikes against civilian targets. National security and intelligence officials warn that future terrorist attacks against civilian targets are possible. Due to the flammable nature of Liquefied Petroleum Gas (LPG) and the potential impact the explosion of an LPG vessel would have on Portsmouth Harbor and the surrounding area, the delay inherent in the NPRM process is contrary to public interest insofar as it would render LPG vessels in the Captain of the Port, Portland, Maine zone vulnerable to subversive activity, sabotage or attack. The delay inherent in the NPRM process is also unnecessary since this rulemaking is needed to protect the safety of the vessels, persons and others in the maritime community from the hazards associated with the transit and limited maneuverability of a large tank vessel.

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**. The measures contemplated by the rule are intended to prevent possible terrorist attacks against LPG vessels, and to protect other vessels, waterfront facilities, the public and the Portsmouth Harbor and surrounding areas on the Piscataqua River from potential sabotage or other subversive acts, accidents or other causes of a similar nature. In addition, the zones protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a large tank vessel. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest. These zones should have minimal impact on the users of the Captain of the Port, Portland, Maine 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 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 local notice to mariners and marine information broadcasts.

##### **Background and Purpose**

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts, and flown into the World Trade Center in New York, New York, inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are prudent for 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 rulemaking establishes safety and security zones in a radius around LPG vessels while the vessels are moored at the SEA-3, Inc. LPG receiving facility on the Piscataqua River in Newington, New Hampshire. It also creates a moving safety and security zone any time an LPG vessel is within Captain of the Port, Portland, Maine zone, as defined in 33 CFR 3.05-15, in the internal waters of the United States and the navigable waters of the United States. Under the Ports and Waterways Safety Act, navigable waters of the United States includes 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 baselines of the United States determined in accordance with international law. This regulation establishes safety and security zones with identical boundaries covering the following areas of the Portland, Maine Marine Inspection Zone and Captain of the Port, Zone: (a) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas vessel while it is moored at the SEA 3, Inc. LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and (b) except as provided in paragraph (a) of this section, in the waters of the Portland, Maine Marine Inspection Zone and Captain of the Port, Zone, all waters one mile ahead, one half mile astern, and 1000-yards on either side of any Liquefied Petroleum Gas vessel.

This rulemaking also temporarily suspends a safety zone for transits of tank vessels carrying Liquefied Petroleum Gas in Portsmouth Harbor, Portsmouth, New Hampshire. Title 33

CFR 165.103 currently provides for safety zones 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 vessel Liquefied Petroleum Gas 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). This safety zone 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. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the flammable nature of LPG vessels and impact the ignition of this cargo would have on Portsmouth Harbor, areas along the Piscataqua River and surrounding areas, increased protection of these vessels is necessary. In comparison to 33 CFR § 165.103, this rulemaking provides 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; and it provides continuous protection for LPG vessels 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 Marine Inspection Zone and Captain of the Port Zone rather than limiting the protection to vessels carrying LPG and which 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 rulemaking also recognizes the safety concerns associated with an unloaded LPG vessel. 33 CFR § 165.103 only establishes safety zones around loaded LPG tank vessels or while the vessel is transferring its cargo. This rulemaking establishes safety and security zones around any LPG vessels, loaded or unloaded, any time a LPG vessel is located in the Portland Marine Inspection Zone and Captain of the Port Zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. These

zones provide necessary protection to unloaded vessels, which continue to pose a safety/security hazard. This rulemaking 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 the prescribed 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, Portland, Maine. The Captain of the Port, Portland, Maine 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, Portland, Maine. 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 \$100,000), in rem liability against the offending vessel, and license sanctions. In addition, this rulemaking provides for increased protection on each side of the vessel, extending the protection from the limits of the navigable channel, to 1000 yards on each side of any LPG vessel. This safety and security zone also protects vessels which are not loaded but which may continue to present a safety concern due to ignition of the vapor material.

#### Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 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 proposal 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: This Security zone encompasses only a portion of the Portland Maine Marine Inspection Zone and Captain of the Port, Zone around the transiting LPG carrier, allowing vessels to safely navigate around the zones without delay and maritime advisories will be made to advise the maritime community of the Security zone when in effect.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the 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.

#### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and have determined that this rule does not have sufficient federalism implications for Federalism under that order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An Unfunded Mandate is a regulation that requires a state, local or tribal government or the private sector to incur costs without the Federal government's having first provided the funds to pay those costs. This rule will not impose an Unfunded Mandate.

#### 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 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**

The Coast Guard has 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 concern 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. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, 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.

**Environment**

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

**Energy Effects**

The Coast Guard has 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.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

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, 160.5; 49 CFR 1.46.

2. Suspend 33 CFR 165.103 from November 9, 2001 through June 21, 2002.

3. From November 9, 2001 through June 21, 2002, add temporary § 165.T01-192 to read as follows:

**§ 165.T01-192 Safety and Security Zones: LPG Carriers transits in Portland Marine Inspection Zone and Captain of the Port Zone, Portsmouth Harbor, Portsmouth New Hampshire.**

(a) *Location.* The following areas are safety and security zones: (1) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas vessel while it is moored at the SEA 3, Inc. LPG receiving facility on the Piscataqua River, Newington, New Hampshire.

(2) Except as provided in paragraph (a)(1) of this section, in the internal waters of the United States and the navigable waters of the United States, as defined by 33 U.S.C. 1222(5), that are within the of the Portland, Maine, Marine Inspection Zone and Captain of the Port Zone, all waters one mile ahead, one half mile astern, and 1000-yards on either side of any Liquefied Petroleum Gas vessel.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone 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, Portland, Maine.

Dated: November 8, 2001.

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

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

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**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 169**

[USCG-1999-5525]

RIN 2115-AF82

**Mandatory Ship Reporting Systems**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard adopts, as final, with changes, its interim rule published on June 1, 1999. The interim rule implemented two mandatory ship reporting systems in an effort to reduce the threat of ship collisions to endangered northern right whales (also known as North Atlantic right whales). The final rule clarifies reporting requirements.

**DATES:** This final rule is effective December 20, 2001.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-1999-5525 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding this rule, contact Lieutenant Alan Blume, Office of Vessel Traffic Management (G-MWV), Coast Guard, telephone 202-267-0550623. For questions on viewing or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

**SUPPLEMENTARY INFORMATION:****Regulatory History**

On June 1, 1999, the Coast Guard published an interim rule entitled Mandatory Ship Reporting Systems in the **Federal Register**. In that publication we solicited comments (64 FR 29229). On June 9, 1999, we corrected the end date of the comment period to read August 2, 1999. (64 FR 31037). We received four letters commenting on the interim rule. No public hearing was requested, and none was held.

**Background and Purpose**

In response to the endangered status of northern right whales (also known as