

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1C, 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.

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 proposed rule under Executive Order 13211, Action Concerning Regulation that Significantly Affect Energy Supply, Distribution, or Use. We have determined that 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.

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, and 33 CFR 1.05-1(g), 6.04-6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09-007 is added to read as follows:

§ 165.T09-007 Safety zone; Maumee River, Lake Erie, Ohio

(a) **Location.** All waters and adjacent shoreline of the Maumee River, Toledo, Ohio, extending from the bow of the

museum ship SS WILLIS B. BOYER at 41° 38' 35" N, 083° 31' 54" W; then north north-east to the south end of the City of Toledo Street at 41° 38' 51" N, 083° 31' 50" W; then south-west to the Maumee River Buoy #64 (LLNR 6361) at approximate position 41° 38' 48" N, 083° 31' 58" W; then returning south south-east to the original starting position on the bow of the Museum ship SS WILLIS B. BOYER (NAD 1983).

(b) **Effective time and date.** This section is effective from 10 p.m. until 11 p.m. on May 25th 2002.

(c) **Regulations.** In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: April 26, 2002.

David L. Scott,
Commander, U.S. Coast Guard, Captain of the Port, Toledo.

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a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780-3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 31, 2001, the Coast Guard published a temporary final rule (TFR) entitled "Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire" in the **Federal Register** (66 FR 67487). The effective period for this rule was from December 7, 2001 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from waters surrounding the plant. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. 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. No letters commenting on the present rule have been received from the public.

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, heightened security measures are necessary surrounding the Seabrook Nuclear Power Plant. A temporary security zone was implemented around the Seabrook Nuclear Power Plant to protect against possible damage to the

facility from subversive activity, sabotage or terrorist attacks initiated from the surrounding waters. The rule was also implemented to protect persons at the facility, the public and surrounding communities from the catastrophic impact release of nuclear radiation would have on the surrounding area, and to provide the Captain of the Port, Portland, Maine with enforcement options to deal with potential threats to the security of the plant.

There is a continuing need for the protection of the plant. The temporary security zone surrounding the plant is only effective until June 15, 2002. The Coast Guard intends to implement a permanent security zone surrounding the facility. In order to provide continuous protection to the plant until the permanent zone is promulgated, the Coast Guard is extending the effective date of the rule until August 15, 2002. This extension will permit sufficient time to implement a permanent zone through notice and comment rulemaking, while ensuring that there is no lapse in coverage of the facility.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a 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 were issued under authority contained in 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This temporary final 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this

regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community and signs will be posted informing the public of the boundaries of the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard 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. 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. For the reasons enumerated in the Regulatory Evaluation section above, this security zone 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], the Coast Guard offered to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization or governmental jurisdiction would be affected by this rule, and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office Portland, Maine, at (207) 780-3251.

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 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 action. In particular, the Act addresses actions that may require 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 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.

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. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

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.

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 proposes 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: 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 temporary § 165.T01–207, (b) to read as follows:

§ 165.T01–207; Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

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(b) *Effective dates.* This rule is effective from December 7, 2001 until August 15, 2002.

* * * * *

Dated: April 29, 2002.

M. P. O'Malley,

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

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-01-192]

RIN 2115-AA97

Safety and Security Zones; Portsmouth Harbor, Portsmouth, New Hampshire

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period of a temporary final rule establishing safety and security zones around vessels capable of carrying Liquefied Petroleum Gas (LPG) within the Captain of the Port, Portland, Maine zone. This change will extend the effective date of the temporary final rule until August 15, 2002, allowing time to develop a permanent rule.

DATES: Section 165.T01–192, added at 66 FR 58064 effective from November 9, 2001 through June 21, 2002 is extended in effect to August 15, 2002, and is amended effective May 8, 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 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, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780-3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 20, 2001, the Coast Guard published a temporary final rule (TFR) entitled "Safety and Security Zones: LPG transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone" in the **Federal Register** (66 FR 58064). This rule was effective from November 9, 2001 through June 21, 2002. The Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (d) (3), the Coast Guard finds that good cause exists for not publishing a NPRM. This original temporary rule was urgently required to facilitate the safe passage of Liquefied Petroleum Gas (LPG) vessels into the Port of Portsmouth, NH, and to protect the port from the inherent dangers posed by the flammable nature of LPG and the potential impact the explosion of a LPG vessel could have on Portsmouth Harbor

and the surrounding area. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this temporary rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

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 this rule are intended to prevent possible terrorist attacks against LPG vessels, and to protect other vessels, waterfront facilities, the public, 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 are intended to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a large tank vessel.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule. This revision preserves the status quo within the port while permanent rules are developed. The present temporary rule has not been burdensome on the maritime public as LPG vessel transits are infrequent. No letters commenting on the present temporary rule have been received from the public.

Background and Purpose

The September 11, 2001 terrorist attacks on New York and Washington D.C. 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 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 a LPG vessel was subjected to a terrorist attack.

The original temporary rule established safety and security zones in