

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.

* * * * *

(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.

[FR Doc. 02-11490 Filed 5-7-02; 8:45 am]

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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

a 500-yard radius around LPG vessels while the vessels were moored at the LPG receiving facility on the Piscataqua River in Newington, New Hampshire. It also created moving safety and security zones any time a LPG vessel was within Captain of the Port, Portland, Maine zone, as defined in 33 CFR 3.05-15, including the internal waters and out to 12 nautical miles from the baseline of the United States.

The original temporary rule also temporarily suspended a safety zone, defined in 33 CFR 165.103, for transits of tank vessels carrying LPG in Portsmouth Harbor, Portsmouth, New Hampshire. 33 CFR 165.103 recognized the safety concerns with transits of large tank vessels, but was inadequate to protect LPG vessels from possible terrorist attack, sabotage or other subversive acts. The original temporary rule provided increased protection for LPG vessels by establishing 500-yard safety and security zones around LPG vessels while moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and by providing continuous protection for LPG vessels anytime a vessel was within the waters of the Captain of the Port, Portland, Maine zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. 33 CFR 165.103 limited protection to vessels carrying LPG that were transiting to and from the facility. The original temporary rule also extended 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 original temporary rule also recognized the continued need for a safety zone around LPG vessels, which is 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.

This rulemaking will extend the effective date of the original temporary rule until August 15, 2002, to allow the establishment of permanent safety and security zones by notice and comment rulemaking, while retaining the added protections implemented in the temporary rulemaking. Due to the infrequent arrivals of LPG vessels in the Port of Portsmouth, this rulemaking will not have a significant effect on the maritime community. Nevertheless, the flexibility to utilize the measures permitted by the temporary rule is vital to ensure port security in the present environment.

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).

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: (1) These safety and security zones encompass only a portion of the Captain of the Port, Portland, Maine zone around the transiting LPG vessel, allowing vessels to safely navigate around the zones without delay, and (2) maritime advisories will be made in advance to advise the maritime community of the safety and security zones when in effect.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule.

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.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this rule 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 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, 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 Agricultural 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 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 or 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 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

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 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 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.

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 record keeping requirements, Security measures, Waterways.

Regulation

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, 160.5; 49 CFR 1.46.

[§ 165.103 Suspended]

2. Suspend § 165.103 from June 21, 2002 through August 15, 2002.

3. In temporary § 165.T01-192 revise the section heading and add a new paragraph (c) to read as follows:

§ 165.T01-192 Safety and Security Zones; LPG Transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone

* * * * *

(c) *Effective dates.* This section is effective from November 9, 2001 through August 15, 2002.

Dated: April 29, 2002.

M.P. O’Malley,

Commander, Coast Guard, Captain of the Port, Portland, ME.

[FR Doc. 02-11491 Filed 5-7-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 124

Procedures for Decisionmaking

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 100 to 135, revised as of July 1, 2001, in § 124.15, on page 266, the third sentence of paragraph (a) is revised, and in § 124.56, on page 276, paragraph (b)(1)(vi) is revised, as follows:

§ 124.15 Issuance and effective date of permit.

(a) * * * This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under § 124.19 of this part. * * *

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§ 124.56 Fact sheets (applicable to State programs, see § 123.25 (NPDES).)

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(b) * * *

(1) * * *

(vi) Waivers from monitoring requirements granted under § 122.44(a) of this chapter.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-7208-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Spent Catalysts From Dual-Purpose Petroleum Hydroprocessing Reactors

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of response to comments on the scope of petroleum hazardous waste listings.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to maintain its interpretation that under RCRA regulations, spent catalyst wastes removed from dual purpose hydroprocessing reactors at petroleum refining facilities are listed hazardous wastes. This interpretation was previously announced in Agency memoranda dated November 29, 1999 and June 1, 2000. In a **Federal Register** notice published July 5, 2001 (66 FR 35379), EPA announced that it was providing the public an opportunity to comment on the interpretation set forth in these memoranda and that the Agency would issue a second **Federal Register** notice that would announce EPA’s decision and provide responses to those comments received. EPA’s responses are provided in today’s document and in a background document, “Response to Comments: July 5, 2001 FR Notice on Spent Catalysts from Dual-Purpose Petroleum Hydroprocessing Reactors.” The regulations addressed in the memoranda and again in today’s document were promulgated under the Resource Conservation and Recovery Act (RCRA) on August 6, 1998 (63 FR 42110).

ADDRESSES: Supporting materials to this notice are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-2002-PR2F-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review file materials, we recommend that you make an appointment by calling (703) 603-9230. You may copy a maximum of 100 pages from any file maintained at the RCRA Docket at no charge. Additional copies cost \$0.15/per page. The docket index and some supporting materials are available electronically. See the beginning of the **SUPPLEMENTARY INFORMATION** section for information on accessing them.