

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 (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.609 is revised to read as follows:

#### § 117.609 Mystic River

(a) The draw of the S99 Alford Street Bridge, mile 1.4, shall open on signal; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m., daily. From November 1 through March 31, between 3 p.m. and 7 a.m., at least an eight-hour advance notice is required for bridge openings by calling the number posted at the bridge.

(b) The draw of the Wellington Bridge, mile 2.5, need not open for the passage of vessel traffic.

Dated: October 3, 2002.

**J.L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

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### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

**[CGD01-02-023]**

**RIN 2115-AA97**

#### Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing safety and security zones for liquefied natural gas carrier (LNGC) vessels and a liquefied natural gas facility within the Boston Captain of the Port Zone. Entry into or movement within these zones is prohibited without prior authorization from the Captain of the Port (COTP), Boston, MA. These zones are needed to safeguard the LNGC vessels and Liquid Natural Gas (LNG) facility, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and are needed to protect persons, vessels and others in the maritime community from the safety hazards associated with the transit and limited maneuverability of an LNGC vessel.

**DATES:** This rule is effective November 12, 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 [CGD01-02-023] and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109 between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Daniel Dugery, Marine Safety Office Boston, Waterways Security and Response Division, at (617) 223-3000.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On July 26, 2002, we published a notice of proposed rulemaking (NPRM)

entitled Safety and Security Zone; Liquefied Natural Gas Carrier (LNGC) Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone in **Federal Register** (67 FR 48834). We received 1 letter commenting on the proposed rule. No public hearing was requested, and none was held.

#### Background and Purpose

In light of the terrorist attacks in New York City and Washington, DC on September 11, 2001, safety and security zones are being established to safeguard the LNGC vessels and LNG facilities, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a LNGC vessel. These safety and security zones prohibit entry into or movement within the specified areas.

This rule establishes safety and security zones around LNGC vessels while the vessels are anchored in the waters of Broad Sound or moored at the Distrigas facility in Everett, MA. This rule also creates a moving safety zone around any LNGC vessel within navigable waters of the United States in the COTP Boston zone, as defined in 33 CFR 3.05-10. Under the Ports and Waterways Safety Act, 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.

The Captain of the Port anticipates some impact on vessel traffic due to this regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

#### Discussion of Comments and Changes

The only comment received on this rulemaking commended the Coast Guard on protecting the LNGCs entering the port. In light of this comment and the lack of additional comments, no changes have been made to this rule.

#### Discussion of Rule

##### Safety and Security Zones

This rule establishes three safety and security zones with identical boundaries, within the COTP Boston zone. The first safety and security zones

are all waters of Broad sound within a 500 yard radius of any anchored LNGC vessel located within an area bounded by a line starting at position 42°25' N, 070°58' W; then running southeast to position 42°22' N, 070°56' W; then running east to position 42°22' N, 070°50' W; then running north to position 42°25' N, 070°50' W; then running west back to the starting point. The second safety and security zones are all waters of the Mystic River within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA. Finally, except as enumerated above, safety and security zones will be two miles ahead and one mile astern, and 500 yards on each side of any LNGC vessel underway within the COTP Boston zone. All coordinates are NAD 83.

This rulemaking replaces the established safety zone listed at 33 CFR 165.110. That safety zone does not provide the current necessary level of protection. Section 165.110 recognizes the safety concerns with transits of LNGC vessels, but is inadequate to protect LNGC 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 LNGC vessels and impact the ignition of this cargo could have on the port of Boston and surrounding areas, increased protection of these vessels and the Distrigas facility is necessary.

This rulemaking provides increased protection for LNGC vessels moored at the Distrigas facility and establishes protection for the vessels in Broad Sound. It also provides continuous protection for LNGC vessels 2 miles ahead, 1 mile astern, and 500-yards on each side of an LNGC vessel anytime a vessel is underway within the COTP Boston zone, rather than limiting this protection to the limits of the Boston Main Ship Channel while a vessel is transiting Boston Harbor and Boston North Channel (as the previous zone in § 165.110).

The increased protection provided in this rule also recognizes the safety concerns associated with an unloaded LNGC vessel. 33 CFR 165.110 only establishes safety zones around loaded LNG tank vessels or while these vessels are transferring their cargo. This rule establishes safety and security zones around any LNGC vessel, loaded or unloaded, while anchored in Broad Sound, at the Distrigas facility pier, and any time a LNGC vessel is located in the Boston 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 and security risk if unprotected. This rulemaking also recognizes the continued need for safety zones around LNGC 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 LNGC vessel laden with LNG or residual cargo.

No person or vessel will be able to enter or remain in these safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone will be required to obey any direction or order of the Captain of the Port. The Captain of the Port will be able to take possession and control of any vessel in a security zone and remove any person, vessel, article or thing from a security zone. No person will be able to 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. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1225, 1226, and 1231.

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.

#### 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).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

There may be some adverse effects on the maritime community by this rule, but those effects will be minimized by: the minimal time that vessels will be restricted from the areas, the ample room for vessels to navigate around the

zones in Broad Sound and, in most portions of the navigable waters of the United States, the fact that vessels can transit ahead, behind, or after the passage of LNGC vessels. In addition, vessels will be able to request permission from the Captain of the Port or representatives on scene to pass through the zones, and advance notifications will be made to the local maritime community by marine information broadcasts.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Broad Sound or Boston Harbor. For the reasons enumerated in the Regulatory Evaluation section above, in addition to the fact that small entities have been operating in the Captain of the Port Boston, MA, Zone under a similar regulation for over 18 years, these safety and security zones 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 want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization will be affected by this rule and you have questions concerning its provisions or options for compliance, please call Chief Daniel Dugery, at (617) 223–3000. 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 comments 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 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.

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have 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 direct costs without the Federal Government having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

#### Taking of Private Property

This rule does 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 analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to security 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 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

#### 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

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2-1, (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

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

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

2. Revise § 165.110 to read as follows:

#### § 165.110 Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Massachusetts.

(a) **Definition.** 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.

(b) **Location.** The following areas are safety and security zones:

(1) **Vessels underway.** All navigable waters of the United States within the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05-10, two miles ahead and one mile astern, and 500 yards on each side of any liquefied natural gas carrier (LNGC) vessel while underway.

(2) **Vessels anchored in the Broad Sound.** All waters within a 500-yard radius of any anchored LNGC vessel located in the waters of Broad Sound bounded by a line starting at position 42 deg. 25' N, 070 deg. 58' W; then running southeast to position 42 deg. 22' N, 070 deg. 56' W; then running east to position 42 deg. 22' N, 070 deg. 50' W; then running north to position 42 deg. 25' N, 070 deg. 50' W; then running west back to the starting point (NAD 83).

(3) **Vessels moored at the Distrigas LNG facility.** All waters within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA.

(c) **Regulations.** (1) In accordance with the general regulations in Sec. 165.23 and Sec. 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Boston, or his/her authorized representative.

(2) All vessel operators shall comply with the instructions of the COTP or his/her 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, local, State, and Federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the safety and security zones in this section unless previously authorized by the Captain of the Port, Boston, or his/her authorized patrol representative.

Dated: September 24, 2002.

**B.M. Salerno,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-01-227]

RIN 2115-AA97

### Safety and Security Zones; High Interest Vessels—Boston Harbor, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing safety and security zones for vessels determined to be in need of a Coast Guard escort by the Captain of the Port (COTP), Boston. The safety and security zones close all waters of Boston Harbor one thousand (1000) yards ahead and astern and one hundred (100) yards on each side of an escorted vessel (EV) in transit. The zone prohibits entry into or movement within this portion of the COTP Boston zone without COTP authorization. The safety and security zone is needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. The zones will prohibit entry into or movement within this portion of the COTP Boston zone without COTP authorization.

**DATES:** This final rule is effective November 12, 2002.

**ADDRESSES:** Documents as indicated in this preamble are part of docket CGD01-01-227 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223-3000.

### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On April 29, 2002, we published “Interim rule with request for comments” in the **Federal Register** (67 FR 20909). As of the end of the comment period, June 28, 2002, the Coast Guard has not received additional comments on this rule. No additional

public hearings were requested, and none were held. Public comments received in response to the NPRM, published on January 18, 2002 at 67 FR 2614, were incorporated into the interim final rule. No comments were received on the interim final rule and, therefore, no changes have been made in this final rule.

#### Background and Purpose

The September 11, 2001 terrorist attacks on New York City and Washington, DC inflicted catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are necessary for vessels that may be targets of terrorist acts. This final rule establishes safety and security zones for vessels the Captain of the Port (COTP) Boston determines are in need of a Coast Guard escort.

#### Discussion of Comments and Changes

In the interim rule with requests for comments (67 FR 20909), the Coast Guard incorporated 22 comments from the public regarding this proposal. All comments received were considered in the development of this Final Rule. As of June 28, 2002 no additional changes have been proposed.

#### Regulatory Evaluation

This 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 rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this final rule will prevent some traffic from moving within a portion of Boston Harbor during EV transits, the effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area; vessels can pass safely around the zones at most points in the Harbor; vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), 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 final rule will not have a significant economic impact on a substantial number of small entities. This final rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor during EV transits. This final rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zones; vessels can pass safely around the zones at most points in Boston Harbor; vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Chief Daniel Dugery at the address listed under **ADDRESSES**.

#### Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

The Coast Guard analyzed this final rule under Executive Order 13132 and has determined that this rule does not have 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