

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[CGD11-04-001]

RIN 1625-AA11

Regulated Navigation Area; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and Connecting Waters, CA

AGENCY: Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to designate San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and the connecting waters as a Regulated Navigation Area for the purpose of limiting the amount of time vessels carrying liquefied hazardous gas ("LHG") may remain within these waters. This regulation would protect the public and ports within the heavily populated San Francisco Bay area by reducing the chances that vessels carrying LHG are either subject to a terrorist attack or involved in an accident within these waters. Vessels carrying LHG would not be allowed to anchor in the San Francisco Bay area and would be required to proceed directly to their intended offload facility.

DATES: Comments and related material must reach the Coast Guard on or before April 19, 2004.

ADDRESSES: You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD11-04-001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The Threat of maritime attacks is real as evidenced by the attack on the USS COLE and the subsequent attack in October 2002 attack against a tank vessel off the coast of Yemen. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002).

Additionally, the U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to

maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. Moreover, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the District Commander must have the means to deter threats to the port while sustaining the flow of commerce. A Regulated Navigation Area is a tool available to the Coast Guard that may be used to control vessel traffic through ports, harbors, or other waters.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of regulated navigation areas, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish regulated navigation areas pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular proposed rulemaking, to address the aforementioned security concerns and to take steps to prevent a terrorist incident involving vessels carrying liquefied hazardous gas (LHG), the Coast Guard is proposing to designate San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and the connecting waters as a Regulated Navigation Area for the purpose of prohibiting vessels carrying LHG from anchoring or unnecessarily remaining within these areas. Since September of 2001, as part of the efforts to increase the safety and security of the Port of San Francisco Bay, the Captain of the Port (COTP) has been issuing COTP Orders to prohibit LHG carrying vessels from anchoring prior to discharging their cargo. As such, this proposed rule would codify the

established policy of prohibiting LHG carrying vessels from anchoring in San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and the connecting waters.

Discussion of Proposed Rule

The proposed rule would designate San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and the connecting waters as a Regulated Navigation Area. "Liquefied hazardous gas (LHG)" is defined as a liquid containing one or more of the products listed in Table 127.005 of Title 33 of the Code of Federal Regulations that is carried in bulk on board a tank vessel as a liquefied gas product. The hazards associated with these products include toxic or flammable properties or a combination of both.

This proposed rule is needed for national security reasons to protect the public, the port, and the environment from potential subversive acts, accidents or other events of a similar nature. Prohibiting LHG vessels from anchoring would limit the amount of time these vessels are underway in the San Francisco Bay area and would reduce the associated potential hazards posed by their cargo. Deviations from this rule will be prohibited unless specifically authorized by the Captain of the Port or his designated representative.

Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the rule described herein, would be punishable by civil penalties (where each day of a continuing violation is a separate violation), criminal penalties (including imprisonment up to 6 years) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation would also face imprisonment up to 12 years. Vessels or persons violating this section would also be subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, and imprisonment up to 10 years.

The Captain of the Port would enforce this regulation and could enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in

addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation would not be significant because vessels carrying LHG have been directed by COTP orders not to anchor within San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California since September of 2001. Therefore, this proposed rule would be a continuation of the established policy of prohibiting LHG vessels from anchoring in the San Francisco Bay area, and having it published would simply remove the need to issue a COTP order each time an LHG vessel enters the bay. In addition, LHG vessels may be allowed to anchor on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule would only effect LHG vessels within San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California, it would still allow these vessels to complete their intended purpose of

delivering LHG cargo, and the rule would be a continuation of a policy that has been in effect since September of 2001.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Doug Ebberts, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

Collection of Information

This proposed 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule would not be an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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, 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of

the Instruction, from further environmental documentation because we would be establishing a Regulated Navigation Area.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) will be available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1185, to read as follows:

§ 165.1185 Regulated Navigation Area; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California.

(a) *Location.* All waters of San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters in California are a Regulated Navigation Area.

(b) *Definition.* *Liquefied hazardous gas (LHG)* means a liquid containing one or more of the products listed in Table 127.005 of 33 CFR 127.005 that is carried in bulk on board a tank vessel as a liquefied gas product.

(c) *Regulations.* All vessels loaded with a cargo of liquefied hazardous gas (LHG) within the Regulated Navigation Area established by this section must proceed directly to their intended cargo reception facility to discharge their LHG cargo, unless:

(1) The vessel is otherwise directed or permitted by the Captain of the Port. The Captain of the Port can be reached at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative; or,

(2) The vessel is in an emergency situation and unable to proceed as

directed in paragraph (a) of this section without endangering the safety of persons, property, or the environment.

Dated: January 29, 2004.

Kevin J. Eldridge,

Rear Admiral, U.S. Coast Guard, District Commander, Eleventh Coast Guard District.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D 020904A]

RIN 0648–AR69

Sea Turtle Conservation; Public Hearing Notification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing its intent to hold a public hearing to inform interested parties of the proposed prohibitions and restrictions on Virginia pound net leaders and to accept public comments on this action.

DATES: NMFS will hold a public hearing at the Holiday Inn SunSpree Resort - Virginia Beach, on Thursday, February 19, 2004, at 7 p.m., eastern daylight time.

ADDRESSES: The Holiday Inn SunSpree Resort - Virginia Beach is located at 3900 Atlantic Avenue, at the corner of Atlantic Avenue and 39th Street, Virginia Beach, VA 23451 (ph. 757–428–1711). The public hearing will take place in the Cape Henry Room.

FOR FURTHER INFORMATION CONTACT: Carrie Upite (ph. 978–281–9328 x6525), NMFS, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on February 6, 2004 (69 FR 5810), which proposes to prohibit the use of all pound net leaders from May 6 to July 15 each year in the Virginia waters of the mainstem Chesapeake Bay, south of 37° 19.0' N. lat. and west of 76° 13.0' W. long., and all waters south of 37° 13.0' N. lat. to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I–64) and the York River downstream of the Coleman Memorial Bridge (Route