

(i) Moored vessels or vessels anchored in a designated anchorage area. A moored or an anchored vessel in a security zone described in paragraph (a) of this section must remain moored or anchored unless it obtains permission from the Captain of the Port to do otherwise.

(ii) Commercial vessels operating at the waterfront facilities within zone described in paragraph (a) of this section.

(iii) Commercial vessel transiting directly to or from waterfront facilities within a security zone described in paragraph (a) of this section.

(iv) Vessels providing direct operational/logistic support to commercial vessels within a security zone described in paragraph (a) of this section.

(v) Vessels operated by the port authority or by facilities located within a security zone described in paragraph (a) of this section.

(vi) Vessels operated by federal, state, county, or municipal agencies.

(2) All persons and vessels within a security zone described in paragraph (a) of this section must comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) To request permission as required by these regulations, contact the Sector Houston-Galveston Command Center by telephone at (713) 671-5113. In Freeport, vessels should contact the Captain of the Port's designated on-scene representative for the moving security zone on VHF Channel 16, or by telephone at (979) 233-7551.

(c) *Informational broadcasts.* The Captain of the Port Houston-Galveston will inform the public when moving security zones have been established around vessels via Broadcast Notice to Mariners on VHF channel 16 and 13.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: February 18, 2009.

**William J. Diehl,**

*Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0124]

RIN 1625-AA87

#### Security Zone; Freeport LNG Basin, Freeport, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone in the Freeport LNG Basin. This security zone is needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. Entry into this zone would be prohibited, except for vessels that have obtained the express permission from the Captain of the Port Houston-Galveston or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before June 1, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2008-0124 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant Cliff Harder, Marine Safety Unit Galveston, telephone (409) 978-2700, extension 2705, or e-mail [cliff.j.harder@uscg.mil](mailto:cliff.j.harder@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

## Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0124), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand-deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2008-0124" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-0124 in the Docket ID box, press Enter, and then click on the item in the

Docket ID column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified 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 later notice in the **Federal Register**.

#### Background and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels. To enhance security, the Captain of the Port Houston-Galveston proposes to establish a permanent security zone within the port of Freeport, TX. This would make permanent a temporary final rule that was effective from January 15, 2009, to April 30, 2009. See 74 FR 13341.

This proposed rule would establish a new distinct security zone in the Freeport LNG Basin. This zone would protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or platforms from which terrorist attacks may be launched upon from other vessels, waterfront facilities, and adjacent population centers.

This zone is being proposed for an area concentrated with commercial facilities considered critical to national security. This proposed rule is not designed to restrict access to vessels engaged, or assisting in commerce with waterfront facilities within the security zones, vessels operated by port authorities, vessels operated by

waterfront facilities within the security zones, and vessels operated by federal, state, county or municipal agencies. By limiting access to this area the Coast Guard would reduce potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within the zones. All vessels not exempted under current 33 CFR 165.814(c) desiring to enter this zone would be required to obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry.

#### Discussion of Proposed Rule

The Captain of the Port Houston-Galveston proposes to amend 33 CFR 165.814 to establish a permanent security zone in the Freeport LNG Basin. In proposed paragraph (a)(5)(iii), the zone would encompass all waters shoreward of a line drawn between the eastern point at latitude 28°56'25" N, 095°18'13" W, and the western point at 28°56'28" N, 095°18'31" W. This security zone would be part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

All vessels not exempted under current paragraph (c) of section 165, would be prohibited from entering the proposed security zone unless authorized by the Captain of the Port Houston-Galveston or his designated representative. Revisions to paragraph (c)(2) would provide methods of obtaining authorization: In Houston, vessels can contact the Captain of the Port Houston-Galveston, through Vessel Traffic Service Houston/Galveston on VHF Channel 5A, by telephone at (713) 671-5103, or by facsimile at (713) 671-5159. In Freeport, vessels can contact the Captain of the Port Houston-Galveston through Marine Safety Unit Galveston, by telephone at (409) 978-2700, or by facsimile at (409) 978-2671.

We propose to delete paragraph (b) of 33 CFR 165.814 because it merely states a past effective date for that section and there is no need for this effective date in the regulatory text of a permanent regulation. Accordingly, we propose to redesignate paragraph (c) of section 165.814 as (b).

#### 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. We expect

the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the security zone is not part of the navigable waterway or a commercial fishing ground. It does not impede commercial traffic to or from the Port of Freeport or on the adjacent Intracoastal Waterway.

#### 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 for the following reason: This proposed rule would not interfere with regular vessel traffic within the Freeport Ship Channel and/or the Intracoastal Waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Cliff Harder at (409) 978-2700, extension 2705. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

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

## Taking of Private Property

This proposed rule would 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 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 is not 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.

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule would not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a permanent security zone in the Freeport

LNG Basin. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## 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 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.814 as follows:

- a. Remove paragraph (b) and redesignate paragraph (c) as (b);
- b. Add paragraph (a)(5)(iii) and revise redesignated paragraph (b)(2) to read as follows:

### § 165.814 Security Zone; Captain of the Port Houston-Galveston Zone.

- (a) \* \* \*
- (5) \* \* \*
- (iii) The Freeport LNG Basin containing all waters shoreward of a line drawn between the eastern point at latitude 28°56′25″ N., 095°18′13″ W., and the western point at 28°56′28″ N., 095°18′31″ W. east towards the jetties.
- (b) \* \* \*

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or designated representative. The Captain of the Port Houston-Galveston's designated representatives are any personnel granted authority by the Captain of the Port Houston-Galveston to receive, evaluate, and issue written security zone entry permits, or the designated on-scene U.S. Coast Guard patrol personnel described in paragraph (b)(4).

\* \* \* \* \*

Dated: February 18, 2009.

**William J. Diehl,**

*Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.*

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