



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0460]

RIN 1625-AA00

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise an existing moving safety zone for San Juan Harbor, San Juan, Puerto Rico. The proposed revisions would expand the existing moving safety zone to include an adjacent berthing; add a 50-yard radius around moored liquefied natural gas and liquefied petroleum gas carriers; and update terminal names. This action would continue to prohibit persons and vessels from entering the safety zone, unless authorized by the Captain of the Port San Juan or a designated representative. This action is necessary to better meet the safety and security needs of San Juan Harbor. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0460 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY**

INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787-729-2374, email Pedro.L.Mendoza@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The existing regulation in 33 CFR 165.754, contains a moving safety zone around transiting liquefied petroleum gas (LPG) carriers en route to, or departing from, the Gulf Refinery Oil dock or the Cataño Oil dock. On December 12, 2017, the Coast Guard received a request to assess the waterway suitability of transiting and semi-permanently moored liquefied natural gas (LNG) carriers within the San Juan Harbor. On September 26, 2018, the Coast Guard determined the Port of San Juan could accommodate the safe navigation and mooring of LNG carriers within the San Juan Harbor. On July 18, 2019, a Notice was published in the Federal Register (84 FR 34323) announcing two public meetings would be held on July 26, 2019 by the Coast Guard and New Fortress Energy to receive comments regarding the safe navigation and mooring of LNG carriers through the San Juan Harbor. There were approximately 50 attendees at the public meeting. We received approximately 20 comments, addressing 25 concerns, at the public meetings and

through written submissions made in response to the Notice announcing the public meetings on <https://www.regulations.gov> under Docket Number USCG-2019-0460.

While the Coast Guard completes the rulemaking process for this NPRM, we published two temporary final rules (TFR) under the same docket number (USCG-2019-0686) and both entitled “Safety Zone; San Juan Harbor, San Juan, PR.” These TFRs established temporary safety zones for navigable waters within an area of one half mile around each LNG carrier or LPG carrier (collectively referred to as LG carriers) entering and departing San Juan Harbor. The TFRs also established a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B. The first TFR was published on September 13, 2019 (see 84 FR 48278), and was effective from August 23, 2019 until November 15, 2019. The second TFR was published on October 31, 2019 (84 FR 59726), and is effective until February 28, 2020.

Due to their cargoes, size, draft, and the local channel restrictions, LNG carriers must use of the center of navigation channels for safe transit. The COTP San Juan has determined that potential hazards associated with LNG carriers would be a safety concern for anyone within an area of one half mile during their transit and a 50-yard radius while moored. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within one half mile during the transit of LG carriers through San Juan Harbor and a 50-yard radius while the LG carriers are moored at Puma Energy dock, Cataño Oil dock, or Wharf B. The proposed rule would safeguard vessels at an adjacent berthing location, Puerto Nuevo Berth B, which supplies LNG to the Puerto Rico Electric Power Authority (PREPA) and other industrial sectors.

These regulations are necessary for the protection of life and property on the navigable waters of the United States. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The proposed rule would amend the existing moving safety zone in 33 CFR 165.754 to include LNG carriers, in addition to LPG carriers. We are proposing to change the terminal names, “Gulf Refinery Oil dock or Catano Oil dock” currently referenced in § 165.754 to “Puma Energy Dock, Cataño Oil dock, and Wharf B” to reflect current ownership. The current safety zone is only enforced when LPG carriers are transiting the waters of the San Juan Harbor. However, the moving safety zone in the proposed rule would remain in effect while LG carriers are transiting through the Harbor, and when the carriers are moored. A 50-yard radius is proposed to be added around an LG carriers when these vessels are moored at the terminals. Vessels may seek permission from the COTP to enter, transit through, anchor in, or remain within the safety zone. The public would be notified of the safety zone by a Marine Broadcast Notice to Mariners, which would be issued to the maritime community before the safety zone is activated.

The proposed safety zone would continue to prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port San Juan or a designated representative. The new LNG facility at Wharf B expects to receive one carrier every three days with ship-to-ship transfer operations lasting approximately 18 hours in duration. We do not anticipate this would significantly affect current port operations or navigation. Neighboring facilities would be able to safely continue

operations when a LG carrier is transiting, moored, or engaged in transfer operations. The proposed regulatory text appears at the end of this document.

As noted above, we received approximately 20 comments, addressing 25 concerns, at the public meetings. A discussion of the comments and responses follows.

Two commenters raised concerns about the source of the LNG. Although, this comment is outside of the scope of this proposed rulemaking, New Fortress Energy advised the Coast Guard that the gas will be sourced from a variety of places including Trinidad and Europe. It is unlikely to be sourced from fracking.

Four commenters asked questions about the specific operations being conducted at the new facility. Although, this comment is outside of the scope of this proposed rulemaking, New Fortress Energy advised they anticipate one LNG carrier to arrive every three days and that each ship-to-ship transfer would take around 18 hours. The gas would then be loaded to trucks to be delivered to another primary or secondary power source.

Three commenters raised concerns about changes to operations within San Juan Harbor. Maritime operations within San Juan Harbor are not expected to be hindered by the proposed safety zone, due to its limits in size and duration during the transit and mooring of each LNG vessel. Neighboring facilities will still be able to conduct operations as normal during each LNG transfer.

Two commenters raised concerns about safety, specifically risk for explosion. The Coast Guard has reviewed dispersion rates and explosive limits of the facility's operation and has set the safety zone accordingly to reduce the risk of such an event. Additionally, New Fortress Energy has considered this issue and determined that the

effects of an explosion, which is considered highly unlikely, would be contained within the property lines because there is no landed LNG storage at the facility.

Four commenters raised concerns about not having access to certain documents including the Letter of Intent (LOI) and Waterway Suitability Assessment (WSA). These documents contain business and security sensitive information and would need to be requested through the Freedom of Information Act (FOIA). FOIA requests may be submitted in writing via mail or overnight carrier to: Commandant (Cg-611), ATTN FOIA Officer, US Coast Guard Stop 7710, 2703 Martin Luther King Jr Ave SE, Washington DC 20593-7710.

Five commenters asked questions about the Coast Guard's rulemaking process. We explained our rulemaking process including the purpose of the Federal Register and the types of documents commonly uploaded to the docket folder associated with the rulemaking and contained at <https://www.regulations.gov>. This NPRM provides additional opportunity for public comment on the proposed safety zone.

One commenter raised concern about climate change in Puerto Rico. This comment is outside the scope of this rulemaking.

One commenter asked about the relationship between New Fortress Energy and the Coast Guard. The Coast Guard shares the same relationship and partnership with all of our stakeholders equally and serves as regulators.

Two commenters asked about the project cost, funding source, and consumer savings. This comment is outside the scope of this proposed rulemaking; however, this project has received no public funding and the cost is in the hundreds of millions.

One commenter asked if New Fortress Energy is building any other facilities in Puerto Rico. This comment is outside the scope of this proposed rulemaking; however, New Fortress Energy does not intend to build other facilities in Puerto Rico at this time.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, available exceptions to the enforcement of the safety zone, and notice to mariners. The regulated area will impact small designated areas of navigable channels within San Juan Harbor. The rule will allow vessels to seek permission to enter, transit through, anchor in, or remain within the safety zone. Additionally, notifications to the marine community will be made through Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, and on-scene representatives. The notifications will allow the public to plan

operations around the affected areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. 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 the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. 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 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in

such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would establish a 50-yard radius around transiting and moored liquefied gas carriers. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment

can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 is proposing 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.754 to read as follows:

§ 165.754 Safety Zone; San Juan Harbor, San Juan, PR.

(a) *Regulated area*. A moving safety zone is established in the following area:

- (1) The waters around liquefied gas (LG) carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the Bahia de San Juan Lighted Buoy #3, in approximate position 18°28'17.8"N, 066°07'36.4"W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18°25'47"N, 066°6'32"W. All coordinates are North American Datum 1983.
- (2) The waters around LG carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B.
- (3) The waters around LG carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18°25'47"N, 066°6'32"W when the vessel gets underway, and continuing until the stern passes the Bahia de San Juan Lighted Buoy #3, in approximate position 18°28'17.8"N, 066°07'36.4"W. All coordinates referenced use datum: NAD 83.

- (b) *Regulations.* (1) No person or vessel may enter, transit or remain in the safety zone unless authorized by the Captain of the Port (COTP), San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those operating in the safety zone with the COTP's authorization must comply with all lawful orders or directions given to them by the COTP or his designated representative.
- (2) Persons desiring to transit the area of the safety zones may contact the COTP San Juan or his designated representative to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative.
- (3) Vessels encountering emergencies, which require transit through the moving safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.
- (4) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787-289-2041. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF-FM channels 16 and 22A.
- (5) Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the safety zones will be in effect by providing advance notice of scheduled arrivals and departure of liquefied gas carriers via a Marine Broadcast Notice to Mariners.
- (6) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials

may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: November 27, 2019

G. H. Magee
Captain, U.S. Coast Guard,
Acting Captain of the Port San Juan
[FR Doc. 2019-27105 Filed: 12/16/2019 8:45 am; Publication Date: 12/17/2019]