



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0630]

RIN 1625-AA00

Safety Zone; Bahia de Ponce, Ponce, PR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for certain waters of Bahia de Ponce, Ponce, Puerto Rico. This action is necessary to provide for the safety of life on these navigable waters during ship-to-ship liquefied gas transfer operations between liquefied gas carriers. This rule will prohibit persons and vessels from being in the safety zone when activated unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This rule is effective [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0630 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Natallia Lopez, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787-729-2380, email ssjwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LG	Liquefied Gas
LNG	Liquefied Natural Gas
NPRM	Notice of proposed rulemaking
PR	Puerto Rico
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 20, 2020, New Fortress Energy requested to begin conducting ship-to-ship liquefied natural gas (LNG) transfer operations in a location approximately three nautical miles south of Ponce, Puerto Rico (PR). Coast Guard Sector San Juan engaged with local stakeholders and determined the proposed location could accommodate regular anchoring and ship-to-ship liquefied gas (LG) transfer operations between LG carriers. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with ship-to-ship LG transfer operations between LG carriers would be a safety concern for anyone within 100-yards of the location of the transfer operations. In response, on December 1, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Bahia de Ponce, Ponce, PR” (85 FR 77093). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 31, 2020 we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with transfer operations between LG carriers would be a safety concern for anyone within 100-yards of the location of the transfer operations. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on the NPRM that published December 1, 2020. There are two changes in the regulatory text of this rule from the proposed rule in the NPRM. In § 165.788(a), under “*Regulated area*” the text stating, “The waters around liquefied gas carriers conducting ship-to-ship liquefied natural gas transfer operations,” is changed to, “The waters around liquefied gas carriers conducting ship-to-ship liquefied gas transfer operations,” removing the word “natural.” § 165.788(b)(4), under “*Regulations*,” the phrase “liquefied natural gas” is also changed to “liquefied gas.”

This rule establishes a permanent safety zone in certain waters of Bahia de Ponce, Ponce, PR where New Fortress Energy will be conducting ship-to-ship LNG transfer operations. These operations will be ongoing for the foreseeable future. Accordingly, LG transfer operations will be held at various times on the waters of Bahia de Ponce, Ponce, PR.

This rule establishes a 100-yard safety zone in a location approximately three nautical miles south of Ponce, PR, while LG transfer operations are being conducted. No vessel or person will be permitted to enter the safety zone when activated without obtaining permission from the COTP or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the permanent safety zone by contacting the Captain of the Port San Juan by VHF-FM radio on Channels 16 and 22A, by calling Sector San Juan Command Center at (787) 289-2041, or via email to ssjcc@uscg.mil. If authorization to enter, transit through, or remain in the zones during transfer operations at any time is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

V. Regulatory Analyses

We developed this 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. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and restrictions of the safety zone. The safety zone required for these operations is 100 yards, making the safety zone limited in size. The safety zone is limited to a location approximately three nautical miles south of Ponce, PR, making the zone limited in location. Additionally, the safety zone will be enforced only while LG transfer operations are being conducted, making it limited in duration. Vessels will be permitted to enter the safety zone when ship-to-ship transfer operations are not being conducted, limiting the restrictions associated with the safety zone.

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 received no comments from the Small Business Administration on this rulemaking. 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.

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

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 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 call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

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 comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). 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.

C. Collection of Information

This rule will 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 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 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.

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, 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 determined 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 rule involves a safety zone during ship-to-ship liquefied transfer operations lasting approximately 24 hours that would prohibit entry within 100 yards of the location of the transfer operations. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

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 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: 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. Add § 165.788 to read as follows:

§ 165.788 Safety Zone; Bahia de San Juan, Ponce, Puerto Rico.

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

The waters around liquefied gas carriers conducting ship-to-ship liquefied gas transfer operations in an area 100-yards around each vessel in the approximate position 17°54'20" N, 066°35'6" W. All coordinates are North American Datum 1983.

- (b) Regulations. (1) No person or vessel may enter, transit or remain in the safety zone unless authorized by the Captain of the Port, San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zone must comply with all lawful orders or directions given to them by the Captain of the Port or the designated Coast Guard commissioned, warrant, or petty officer.

- (2) Vessels encountering emergencies, which require transit through the 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.
- (3) 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.
- (4) 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 ship-to-ship liquefied gas transfer operations of liquefied gas carriers via a Marine Broadcast Notice to Mariners.
- (5) 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: January 25, 2021.

G. H. Magee,

Captain, U.S. Coast Guard,

Captain of the Port San Juan.

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