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David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Juan 05-007]

RIN 1625-AA87

#### Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U. S. Virgin Islands. The security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts. The proposed rule would exclude entry into the proposed permanent security zone by all vessels without permission of the U.S. Coast Guard Captain of the Port San Juan or a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

**DATES:** Comments and related material must reach the Coast Guard on or before March 28, 2005.

**ADDRESSES:** You may mail comments and related material to Sector San Juan, 5 Calle La Puntilla, San Juan, PR 00901. Sector San Juan Waterways Management will maintain 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 Resident Inspections Office in St. Croix, United States Virgin Island between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Katuska Pabon of Sector San Juan Waterways Management at 787-289-0739.

**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 (COTP San Juan-05-007), 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 SECTOR San Juan 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 later notice in the **Federal Register**.

#### Background and Purpose

The Coast Guard has published similar temporary security zones in the **Federal Register** at 67 FR 2332, January 17, 2002; 67 FR 57952, September 13, 2002; 68 FR 22296, April 28, 2003; 68 FR 41081, July 10, 2003; 69 FR 6150, February 10, 2004; 69 FR 29232, May 21, 2004; and 70 FR 2950, January 19, 2005. Given the highly volatile nature of the substances stored at the HOVENSA facility, the Coast Guard recognizes that it could be a potential terrorist target and there is a continuing risk that subversive activity could be launched by vessels or persons in close proximity to the facility. This activity could be directed against tank vessels and the waterfront facility. This security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing risk by prohibiting all vessels without a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C from entering within approximately 2 miles of the HOVENSA facility unless specifically authorized by the Captain of the Port San Juan.

#### Discussion of Proposed Rule

The proposed permanent security zone around the HOVENSA facility would be encompassed by a line connecting the following coordinates: 17°41'31" North, 64°45'09" West; 17°39'36" North, 64°44'12" West;

17°40'00" North, 64°43'36" West; and 17°41'48" North, 64°44'25" West, and back to the point of origin. The security zone includes the waters extending approximately 2 miles seaward from the HOVENSA facility, Limetree Bay Channel and Limetree Bay. All coordinates are based upon North American Datum 1983 (NAD 1983). All vessels without a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C are excluded from the zone unless specifically authorized by the Captain of the Port San Juan.

#### 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 burden imposed on the public by this rule is minimal and mariners may obtain permission to enter the zone from the Coast Guard Captain of the Port San Juan or by scheduling vessel arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

#### 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.

The factual basis for this certification is as follows:

(1) Owners of small charter fishing or diving operations that operate near the HOVENSA facility may be affected by the existence of this security zone.

(2) This rule will not have a significant economic impact on the above mentioned or a substantial number of small entities because this zone covers an area that is not typically used by commercial fisherman.

Additionally, vessels may be allowed to enter the zone on a case-by-case basis with the permission of the Captain of the Port San Juan.

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 LTJG Katuska Pabon, Sector San Juan Waterways Management, 787–289–0739. 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 an expenditure, we do discuss the effects of this 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 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 does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, 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 rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. The proposed rule satisfies the criteria for paragraph (34)(g) because it is a security zone.

Under figure 2–1, paragraph (34)(g) of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

#### 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; 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 § 165.766 to read as follows:

**§ 165.766 Security Zone: HOVENSA Refinery, St. Croix, U.S. Virgin Islands.**

(a) *Regulated area.* The Coast Guard is establishing a security zone in and around the HOVENSA Refinery on south coast of St. Croix, U.S. Virgin Islands. This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1: 17°41'31" North, 64°45'09" West, Point 2: 17°39'36" North, 64°44'12" West, Point 3: 17°40'00" North, 64°43'36" West, Point 4: 17°41'48" North, 64°44'25" West, and returning to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Regulations.* (1) Under § 165.33, entry into or remaining in the security zone in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Port of San Juan or vessels have a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

(2) Persons and vessels desiring to transit the Regulated Area may contact the U.S. Coast Guard Captain of the Port, San Juan, at telephone number 787-289-0739 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port.

Dated: January 31, 2005.

**D.P. Rudolph,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector San Juan.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 167**

[USCG-2005-20102]

**Port Access Routes: Approaches to Portland, ME and Casco Bay**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of study; request for comments

**SUMMARY:** The Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the continued applicability of and the need for modifications to current vessel routing measures in the approaches to Portland, Maine and Casco Bay. The goal of the study is to help reduce the risk of marine casualties and increase the

efficiency of vessel traffic management in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

**DATES:** Comments and related material must reach the Docket Management Facility on or before April 11, 2005.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2005-20102 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: <http://dms.dot.gov>.

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

(3) Fax: 202-493-2251.

(4) Delivery: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of study, call John J. Mauro, Project Officer, First Coast Guard District, telephone 617-223-8355, or send e-mail to [jmauro@d1.uscg.mil](mailto:jmauro@d1.uscg.mil); or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202-267-0574, or send e-mail to [Gdetweiler@comdt.uscg.mil](mailto:Gdetweiler@comdt.uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee K. Wright, Program Manager, Docket Operations, telephone 202-366-0271.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this study by submitting comments and related materials. All comments received will be posted, without change, to <http://dms.dot.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this notice of study (USCG-2005-20102), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic

means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them 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.

*Viewing comments and documents:*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://dms.dot.gov> at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*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://dms.dot.gov>.

**Definitions**

The following definitions are from the International Maritime Organization's (IMO's) publication "Ships' Routing" (except those marked by an asterisk) and should help you review this notice:

*Area to be avoided or (ATBA)* means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all vessels, or certain classes of vessels.

*Deep-water route* means a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

*Inshore traffic zone* means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).