

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

[CGD05-03-023]

RIN 1625-AA00

Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the established safety zone at the Cove Point Liquefied Natural Gas (LNG) Terminal. This is in response to the re-opening of the terminal by Dominion Corporation on July 25, 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area around the Cove Point LNG Terminal.

DATES: This rule is effective January 29, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-03-023 and are available for inspection or copying at Commander, U. S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226-1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576-2513.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland" in the **Federal Register** [68 FR 13647]. We received five written comments on the proposed rule. On May 15, 2003, we published a notice of public meeting entitled "Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland" in the **Federal Register** [68 FR 26247]. On June 5, 2003, a public meeting was held at the Holiday Inn, Solomons,

Maryland. We received a total of 12 written comments and 12 oral comments on the proposed rule.

Background and Purpose

As a result of re-opening of the LNG terminal at Cove Point, MD, the Coast Guard has re-evaluated the safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated LNG vessels. To better manage the safety and security of the LNG terminal, this rule incorporates necessary security provisions and changes the size of the existing safety zone. This rule establishes a combined safety zone and security zone for the LNG terminal at Cove Point.

The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks [67 FR 58317 (September 13, 2002) Continuing national emergency with respect to terrorist attacks], [67 FR 59447 (September 20, 2002) Continuing national emergency with respect to persons who commit, threaten to commit or support terrorism]. The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks [E.O. 13273, 67 FR 56215 (September 3, 2002) Security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations]. As such, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. 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 security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to section 104 of the Maritime Transportation Security Act (MTSA) of November 25, 2002, and by 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.

Discussion of Comments

The Coast Guard received 12 written comments and 12 oral comments on the proposed rule.

Nine comments requested a reduction in the size of the proposed 500-yard zone to 50 or 200 yards. Three comments approved of the size of the proposed 500-yard safety and security zone. One comment stated that the NPRM does not sufficiently address the need for such security provisions. The comment stated that the mere existence of an exclusion zone does "absolutely nothing" to further its stated goals, and the mere implementation of a zone does little to impede a "would be" terrorist. The commenter does not believe that the terminal is a terrorist target. The commenter further stated that 33 CFR part 6, the Maritime Transportation Security Act, the Magnuson Act, and the Espionage Act do not apply. The Coast Guard has determined (68 FR 39249, July 1, 2003, Implementation of National Security Initiatives) that significant public benefit accrues if a transportation security incident, as defined in the MTSA, is avoided or the effects of a transportation security incident can be reduced.

These public benefits include human lives saved, pollution avoided, and "public" infrastructure, such as national landmarks and utilities, protected. The safety and security zone serves the purpose of lowering the risk of a transportation security incident and therefore, is a necessary provision. LNG facilities have been determined to be at high risk for a transportation security incident and therefore are subject to such security and safety regulations.

Six comments addressed the size of the zone as a question of balancing public access for fishing and the need for terminal security. Two comments emphasized the need for balance between fishing and security. Three comments stated that the existing 50-yard onshore/200 yard offshore zone is sufficient for security and that fishing should be allowed when a vessel is not docked at the facility. One comment suggested moving the western border to 250 yards to provide fishing and crabbing opportunities along the 13-32 foot drop-off. The Coast Guard recognizes the need for balance between terminal security and access to the waterway for fishing and other uses. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502 [67 FR 70696, November 26, 2002, Safety Zone; Cove Point; Chesapeake Bay, MD, Notice of enforcement of regulation]. Recreational

and commercial vessel operators have been using the area on a regular basis for fishing, passenger tours, and fishing parties.

The reopening of the terminal warrants reevaluation of the current zone, and the increased risk of a transportation security incident warrants the enforcement of the security zone. The Coast Guard has evaluated and weighed the comments it has received regarding this security zone and has addressed the concerns of those who may be affected by it. The purpose of the safety zone is to protect the public from the hazards associated with the cryogenic liquid that is always present at the offshore terminal. The purpose of the security zone is to lower the risk of a potential transportation security incident. The Coast Guard believes that a 500-yard safety and security zone is the appropriate size to provide for both public safety and security of the terminal. In addition, the Coast Guard has coordinated its security evaluation with federal, State, and local agencies prior to the issuance of this rule.

Five comments offered suggestions. Two comments requested that the local community, Coast Guard, and Dominion Corporation come up with an artificial reef somewhere nearby to replace the "gas docks." Another comment stated that security can be managed by painting the charter fleet international orange and letting the charter fleet fish near the docks in the hope that they would defend the docks. Another comment stated that the Coast Guard or Dominion Corporation should provide notice of scheduled LNG vessel arrivals. Another comment suggested marking the zone with buoys. The Coast Guard appreciates these five suggestions, but considers them beyond the scope of this rulemaking.

Discussion of Changes in Rule

The final rule remains the same as the rule we proposed in our NPRM with the exception of the elimination of the paragraph on authority. Since publication of the NPRM, the authorities citation for 33 CFR part 165 has changed. This new authorities citation for the part eliminates the need to cite to 33 U.S.C. 1226 in § 165.502. Therefore we have eliminated the authority paragraph and redesignated the enforcement paragraph as paragraph (c).

Regulatory Evaluation

This 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).

There will be adverse effects on members of the local maritime community that have been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502 (see notice of enforcement, 67 FR 70696, November 26, 2002). Recreational and commercial vessel operators have been using the area on a regular basis for recreational fishing, commercial fishing, passenger tours, and fishing parties. However, enforcement of the current zone would also prohibit these recreational and commercial vessel operators from using this area.

Eleven comments addressed the potential economic impact of this rule on the local fishing industry. Three comments offered separate business cost estimates as a result of the implementation and enforcement of this exclusion zone. One commenter estimated that each year between May 15 and November 15, 70 boats per day fish at the "gas docks." The commenter further estimated that implementation of this safety and security zone would result in an economic impact to the local economy of \$1.986 million for his business alone, and a total economic impact of at least \$9 million per year for all vessels fishing there. Additionally, the commenter estimated that a 500-yard zone would totally eliminate fishing around this popular fishing area. By closing this fishing area the commenter believes anglers will place undue fishing pressure on other fishing areas. Another comment cited the Maryland Department of Natural Resources figures that estimate the economic impact of the Cove Point LNG fishery to be \$5–\$10 million per year. A third comment stated that its business gets half its fishing income from fishing the "gas docks." It is important to note that while this regulation does restrict activities at a specific location, similar activities can still take place outside of the zone and elsewhere throughout the Chesapeake Bay. As a result, this regulation may inconvenience some businesses, but this rule does not constitute a complete cessation of business. Businesses may continue to operate and fish in areas that are not within the safety and security zone. While this makes it difficult for the Coast Guard to accurately determine the level of impact that each business will

face, it is unlikely that the cumulative economic impact of this restriction would reach the threshold of a "significant regulatory action" (\$100,000,000 per year) and therefore a regulatory assessment is not necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities. This rule will affect vessels intending to transit the area surrounding the Cove Point LNG facility. It will also affect anglers intending to fish in the area around the Cove Point LNG facility.

Ten comments stated that this rule would have a significant impact on the local fishing community. Two comments stated that this rule would create an adverse economic impact on 100 small businesses in five surrounding counties. It is likely that this proposed rule would impact a substantial number of small entities; however, it is unlikely that they would be impacted significantly. Therefore, additional guidance to small businesses will not be necessary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. This was accomplished by publishing a notice of proposed rulemaking outlining the Coast Guard's intentions and inviting comments regarding the rule's potential impact to small entities. Additionally, the Coast Guard held a public meeting where it invited owners of small entities to speak out and provide additional and amplifying information to the Coast Guard on the potential impact this rule may have on their small businesses.

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).

Collection of Information

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

The Coast Guard received one comment concerning Unfunded Mandates. The comment stated that this rule is an Unfunded Mandate because the cost to the private sector will be millions of dollars. The Coast Guard has determined that there will be minimal impact on State, local, or tribal governments because representatives of State and local governments infrequently use this area. Furthermore, the impact on State and local governments will be minimal because state and local government representatives can be admitted to the safety and security zone after consultation with the Captain of the Port.

Taking of Private Property

This rule will 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this 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 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 because this rule establishes a safety and security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available

in the docket where indicated under **ADDRESSES**.

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: 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. Revise § 165.502 to read as follows:

§ 165.502 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24'27" N, 76°23'42" W, thence to 38°24'44" N, 76°23'11" W, thence to 38°23'55" N, 76°22'27" W, thence to 38°23'37" N, 76°22'58" W, thence to beginning at 38°24'27" N, 76°23'42" W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576-2693 or via VHF Marine Band Radio 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 or his designated representative.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: December 15, 2003.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03-31787 Filed 12-29-03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-03-204]

RIN 1625-AA00

Safety/Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety/security zone at the Cove Point Liquefied Natural Gas (LNG) Terminal. This is in response to the re-opening of the terminal by Dominion Power in July 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area of 500 yards in all directions around the Cove Point LNG Terminal.

DATES: This rule is effective from January 6, 2004, through January 28, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD05-03-204] and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland 21226-1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576-2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled "Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland" (68 FR 13647). In it we

proposed a permanent safety and security zone. And in response to a request for a public meeting, we announced a June 5, 2003 public meeting and reopened the comment period to June 12, 2003. (68 FR 26247, May 15, 2003). On August 1, 2003, we published a temporary final rule (TFR) entitled "Safety and Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, MD," in the **Federal Register** (68 FR 45165), that expired on September 26, 2003. On September 26, 2003, we issued a TFR entitled "Safety/Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, MD," and published this TFR in the **Federal Register** on October 16, 2003 (68 FR 59538). That temporary final rule will expire January 5, 2004. The final rule is being published elsewhere in this same issue of the **Federal Register** and will become effective January 29, 2004.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking and under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**. It took longer to resolve issues related to the final rule than we expected at the time we issued the last TFR. This new TFR is necessary because it would be contrary to public interest not to maintain a temporary safety and security zone until the final rule becomes effective January 29, 2004, at which time this temporary rule will be removed.

Background and Purpose

In preparation for the re-opening of the LNG terminal at Cove Point, MD, the Coast Guard is evaluating the current safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated vessels. To better manage the safety and security of the LNG terminal, this proposed rule incorporates necessary security provisions and changes the size of the zone. This rule establishes a 500 yard combined safety zone and security zone in all directions around the LNG terminal at Cove Point.

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon building in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. 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 security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) ("Magnuson Act"), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by 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.

Discussion of Rule

This temporary final rule is identical to the previous rules published in the **Federal Register** on August 1, 2003 (68 FR 45165), and October 16, 2003 (68 FR 59538). The Coast Guard was unable to publish an extension to this rule. However, the practical effect of this new temporary final rule is the same and continues the safety and security zone currently in effect.

The Coast Guard is establishing a temporary safety/security zone on specified waters of the Chesapeake Bay near the Cove Point Liquefied Natural Gas Terminal to reduce the potential threat that may be posed by vessels or persons that approach the terminal. The zone will extend 500 yards in all directions from the terminal. The effect will be to prohibit vessels or persons entry into the security zone, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. Federal, state and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This 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). This regulation is of limited size, and vessels may transit around the zone.

There may be some adverse effects on the local maritime community that has been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502. Commercial vessel operators have been using the area on a regular