

coverage provided for medical and surgical benefits?

6. Which aspects of the increased cost exemption, if any, require additional guidance? Would model notices be helpful to facilitate disclosure to Federal agencies, State agencies, and participants and beneficiaries regarding a plan's or issuer's election to implement the cost exemption?

Signed at Washington, DC, this 24th day of December 2008.

**Nancy J. Marks,**

*Division Counsel/Associate Chief Counsel,  
Tax Exempt and Government Entities,  
Internal Revenue Service, Department of the  
Treasury.*

Signed at Washington, DC, this 12th day of January 2009.

**W. Thomas Reeder,**

*Benefits Tax Counsel, Department of the  
Treasury.*

Signed at Washington, DC, this 21st day of April 2009.

**Alan D. Lebowitz,**

*Deputy Assistant Secretary for Program  
Operations, Employee Benefits Security  
Administration, U.S. Department of Labor.*

Dated: March 9, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare  
& Medicaid Services.*

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BILLING CODE 4830-01-P; 4510-29-P; 4120-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 127

[Docket No. USCG-2007-27022]

RIN 1625-AB13

#### Revision of LNG and LHG Waterfront Facility General Requirements

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the requirements for waterfront facilities handling liquefied natural gas (LNG) and liquefied hazardous gas (LHG). The proposed revisions would bring the regulations up to date with existing industry practices and current Coast Guard policy implemented due to increased emphasis on security since the events of September 11, 2001. These revisions would harmonize the Coast Guard's regulations for LNG with those established by the Federal Energy Regulatory Commission (FERC), the agency responsible for permitting onshore and near-shore LNG terminals.

This proposed rulemaking would not affect LNG deepwater ports.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before June 29, 2009 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 29, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2007-27022 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 methods. For instructions on submitting comments, see the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below.

**Collection of Information Comments:** If you have comments on the collection of information discussed in section V.D. of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov) (include the docket number and "Attention: Desk Officer for Coast Guard, DHS" in the subject line of the e-mail) or fax at 202-395-6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call CDR Patrick Clark, CG-5222, U.S. Coast Guard, telephone 202-372-1410. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

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## I. 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.

### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2007-27022), 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, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone 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-2007-27022" 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 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 and may change this proposed rule based on your comments.

#### B. 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–2007–27022) in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the Internet, you may view the docket online by visiting 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.

#### C. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### D. Public Meetings

We do not now plan to hold a public meeting. But, you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a notice in the **Federal Register**.

### II. Abbreviations

CFR Code of Federal Regulations  
 COTP Captain of the Port  
 DHS Department of Homeland Security  
 FERC Federal Energy Regulatory Commission  
 FR *Federal Register*  
 LHG Liquefied hazardous gas  
 LNG Liquefied natural gas  
 LOI Letter of Intent  
 LOR Letter of Recommendation  
 NPRM Notice of proposed rulemaking  
 NVIC Navigation and Vessel Inspection Circular  
 OMB Office of Management and Budget  
 § Section symbol

U.S.C. United States Code  
 WSA Waterway Suitability Assessment

### III. Background and Purpose

Over the last few years, there has been a substantial increase in the worldwide production and transportation of liquefied natural gas (LNG). Currently, the United States consumes about 25 percent of the world's annual natural gas production. Over the next 20 years, U.S. natural gas consumption is projected to increase by 40 percent, and our domestic gas production is not expected to meet this need. Therefore, this likely shortfall may be resolved by increasing marine LNG imports. Currently, there are eight waterfront LNG facilities in the United States: seven are import facilities, and one is an export facility. To meet rising demand, the energy industry has submitted dozens of proposals to build LNG import terminals along our coasts, and an unspecified number of proposals are in the early planning stages.

We have not seen, and do not expect, a similar increase in the production and transportation of other forms of liquefied hazardous gas (LHG). Although LNG and LHG facilities and the cargoes they handle are different in nature, we believe the vessels that transport these cargoes pose similar risks to the waterway environment and the area surrounding the facility when transfer operations are underway.

Safety and security of our ports and waterways have become paramount concerns since the events of September 11, 2001. Currently, the owner or operator intending to construct, modify, or reactivate an LNG or LHG facility must submit a Letter of Intent (LOI) to the Coast Guard. Information obtained in the LOI enables the Coast Guard to provide specific recommendations, in a Letter of Recommendation (LOR), to the agencies having jurisdiction. The LOR serves as the Coast Guard's official recommendation to the jurisdictional agency as to the suitability of the waterway for the proposed facility.

In the case of LNG facilities regulated by the Federal Energy Regulatory Commission (FERC), the LOI has been augmented by a Waterway Suitability Assessment (WSA). The WSA is a risk-based assessment process designed to document and address all safety and security concerns related to the movement of LNG in U.S. ports and waterways. As discussed below, FERC regulations have required since 2005 that prospective applicants for FERC authorization to site, construct and operate LNG terminals submit WSAs to the Coast Guard; guidance on

submission of WSAs is provided in Navigation and Vessel Inspection Circular (NVIC) 05–08, available online at <http://uscg.mil/hq/cg5/nvic/2000s.asp>.

The proposed rule would establish the WSA requirement in Coast Guard regulations, better aligning the regulations of the Coast Guard and FERC with regard to LNG. Although FERC generally does not regulate LHG facilities, this proposed rule would establish the WSA requirement for both LNG and LHG facilities because of the similarities between these cargoes.

#### A. Discussion of FERC Regulations in Regard to LNG

FERC regulates LNG import facilities located onshore or in state waters, but generally does not regulate facilities receiving marine deliveries of LHG. This section provides background information specific to FERC-regulated LNG facilities.

On October 18, 2005, FERC published a final rule in the **Federal Register** (70 FR 60426) implementing the Energy Policy Act of 2005 and creating procedures for the review of LNG terminals and other natural gas facilities. The FERC final rule amended 18 CFR parts 153 and 157 by requiring LNG and other natural gas facility owners and operators (referred collectively herein as “LNG owners and operators”) to submit WSAs to the U.S. Coast Guard as part of the FERC pre-filing process. Although the WSA currently is required by FERC regulations, not Coast Guard regulations, the Coast Guard considers the WSA in developing its LOR.

Prospective applicants seeking FERC's authorization to site, construct, and operate new LNG facilities, and some prospective applicants seeking authority to make modifications to an existing or approved LNG terminal, are required by FERC to make an initial filing to FERC and, concurrently, submit a Letter of Intent (LOI) and a Preliminary WSA to the Coast Guard. After the submission of the initial filing, the Director of FERC's Office of Energy Projects (Director) determines whether the applicant may begin the pre-filing process. If the prospective applicant meets the requirements to begin the pre-filing process, the Director will issue a notice that begins the pre-filing process.

During the pre-filing process, the prospective applicant must satisfy several requirements, including the requirement in 18 CFR 157.21(f) that a prospective applicant “[c]ertify that a Follow-on WSA will be submitted to the U.S. Coast Guard no later than the filing of an application with the Commission

(for LNG terminal facilities and modifications thereto, if appropriate). The applicant must certify that the U.S. Coast Guard has indicated that a Follow-on WSA is not required, if appropriate.”

The prospective applicant must wait at least 180 days after the commencement of the FERC pre-filing process in order to start the FERC filing process. Thus, the FERC regulations result in the LOI being submitted at least 180 days before the applicant files its application for authorization to construct the facility with FERC, even though the existing Coast Guard regulations for new and modified facilities require the LOI be submitted at least 60 days before construction begins.

#### IV. Discussion of Proposed Rule

This proposed rule would align Coast Guard regulations for LNG in 33 CFR part 127 with the existing FERC requirements in 18 CFR parts 153 and 157. Due to the similarities between LNG and LHG, and between LNG and LHG regulations throughout part 127, this rulemaking would maintain the consistent application by the Coast Guard of these regulations for both LNG and LHG.

The Coast Guard proposes amending the LOI submission requirements in § 127.007 to provide more time for review and, in the case of LNG, to ensure consistency with the requirements established by FERC. Current Coast Guard regulations require an owner or operator seeking to construct or modify an LNG or LHG facility to submit the LOI to the Coast Guard at least 60 days before construction begins. For reactivation of inactive facilities under current regulations, the LOI is required at least 60 days before transferring LNG or LHG. The proposed rule would require the LOI be submitted earlier and, to accommodate FERC regulations, would result in slightly different LOI submission requirements for LNG facilities as compared to LHG facilities.

For LNG facility owners or operators seeking to construct or modify a facility, the LOI would be submitted no later than the date the owner or operator files a pre-filing request with FERC under 18 CFR parts 153 and 157, but in all cases at least one year prior to the start of construction. For inactive existing LNG facilities seeking reactivation, the LOI would be submitted no later than the date the owner or operator files a pre-filing request with FERC under 18 CFR parts 153 and 157, but in all cases at least one year prior to the start of transfer operations.

For LHG facilities seeking construction or modification, the LOI would be submitted no later than the date the owner or operator files with the federal or state agency having jurisdiction, but in all cases at least one year prior to the start of construction. For inactive LHG facilities seeking reactivation, the LOI would be submitted no later than the date the owner or operator files with the federal or state agency having jurisdiction, but in all cases at least one year prior to the start of transfer operations.

With regard to the content of the LOI submitted by LNG and LHG facilities, the Coast Guard proposes to add a requirement that the owner or operator provide the name, address, and telephone number of the federal, state, or local agency having jurisdiction. To accommodate the possibility that an owner or operator may need to submit charts showing waterways longer than 25 kilometers, we propose adding the words “at least” in § 127.007(c)(7).

In order to harmonize this regulation with FERC’s regulations requiring the submission of a WSA, and to address emergent security concerns that resulted from the attacks of September 11, 2001, we propose to establish in § 127.007(e) the requirement that a WSA be submitted by an owner or operator seeking to construct or modify an LNG or LHG facility. A WSA would not be required to reactivate an inactive existing LNG or LHG facility, unless the owner or operator sought modification or expansion of marine transfer operations.

The proposed WSA would consist of a Preliminary WSA and a Follow-on WSA, described in proposed §§ 127.007(f) and (g). The Preliminary WSA would be submitted at the same time as the LOI. The Follow-on WSA would be submitted at least 180 days before transfer of LNG or LHG, except in the case of an LNG facility that is required to submit an application to FERC. An LNG facility required to submit an application to FERC would submit the Follow-on WSA to the Coast Guard no later than the date the owner or operator files its application with FERC.

The proposed regulations in 33 CFR 127.007(f) and (g) delineate the content of the WSA. According to the proposed text, the Preliminary WSA, which is an outline of what the fully detailed Follow-on WSA will contain, must provide an introductory explanation of the following: (1) Port characterization; (2) characterization of the facility and tanker route; (3) risk assessment for maritime safety and security; (4) risk management strategies; and (5) resource

needs for maritime safety, security, and response. The Follow-on WSA would contain a detailed analysis of the topics in the Preliminary WSA, and a detailed analysis of any other safety or security impacts to the port and waterway identified by the Captain of the Port (COTP) and not otherwise covered in the list of subjects discussed in the Preliminary WSA.

The LOR described in 33 CFR 127.009 represents the Coast Guard’s recommendation as to the suitability of the waterway for LNG or LHG marine traffic. Current regulations provide for an LOR issued by the Coast Guard to the facility owner or operator and the state or local agencies having jurisdiction. In order to better reflect the role of federal agencies, including FERC’s role in the permitting of LNG facilities, the Coast Guard proposes to issue the LOR to the federal, state, or local government agencies having jurisdiction. The Coast Guard also proposes to add other identified safety and security issues to the list of items considered by the COTP prior to issuing the LOR.

Several years may pass between the issuance of the LOR and the operation of the facility. Therefore, the Coast Guard proposes to add a reporting requirement designed to keep the WSA up-to-date during the period between the issuance of the LOR and the start of facility operations. The new § 127.007(h) would require owners or operators of LNG and LHG facilities that have completed the Preliminary and the Follow-On portions of a WSA, but not begun operation, to annually review their WSAs and provide an annual written report to the COTP. The owners or operators would be required to update the WSAs in the event of any change in conditions affecting the suitability of the waterway for LNG or LHG traffic. For example, changes to the port environment, LNG or LHG facility, or the LNG or LHG tanker route may constitute valid reasons when the WSA would need to be revised and updated. A report also would be required at least 30 days, but not more than 60 days, prior to the start of operations.

These proposed changes to § 127.007 would require renumbering of certain paragraphs mentioned in § 127.001, “Applicability,” which references paragraphs in § 127.007. The Coast Guard proposes to update the paragraph references accordingly.

Finally, to reflect security considerations by the Coast Guard after the events of September 11, 2001, the Coast Guard proposes to add 46 U.S.C. Ch. 701 “Port Security” to its authority citation for these regulations.

## V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on 13 of these statutes or Executive orders.

### A. Regulatory Planning and Review

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. Accordingly, OMB has not reviewed it under that Order.

In this proposed rule, the Coast Guard seeks to revise the requirements for waterfront facilities handling LNG or LHG. For LNG waterfront facilities, this rulemaking proposes to align the Coast Guard’s submission deadlines with those of FERC. For LHG waterfront facilities, this rulemaking would align the Coast Guard’s submission deadlines to match the application timeline for the federal, state, or local agency having jurisdiction, but in no case less than one year prior to the start of construction. The Coast Guard believes it is necessary to require a WSA for both types of facilities and to provide consistency with FERC’s regulations regarding LNG facilities. This proposed rule would also provide consistency for other Coast Guard regulations that address both LNG and LHG facilities.

As noted above, the LOI is not a new requirement for LNG facilities. The WSA also is not a new requirement for LNG facilities: Starting in 2005, FERC regulations required that LNG facility owners and or operators submit the LOI earlier than required by the Coast Guard regulations, and submit a Preliminary and Follow-on WSA to the Coast Guard. The proposed procedure for the owner or operator to submit a WSA to the Coast Guard would not be new for the LNG industry because LNG facility owners and operators have been submitting WSAs to the Coast Guard since 2005; guidance on submission is provided in NVIC 05–08. As of July 22, 2008, we have received 18 WSAs for LNG waterfront facilities.

We expect new waterfront LNG facilities that become operational in the future will not incur additional costs over and above existing waterfront LNG facilities as a result of this proposed rule, because the LNG industry has been conducting WSAs as a common industry practice. We also expect existing LNG facilities will continue to operate according to industry standards

and similarly would not incur additional regulatory costs. The proposed rule would eliminate industry confusion as the Coast Guard aligns its regulations with those of FERC.

As noted above, the submission of an LOI is not a new requirement for LHG facilities. The submission of a WSA for LHG facilities would be a new requirement and would apply only to new LHG facilities or existing facilities that seek to expand or modify operations. Only one LHG facility has submitted a proposal to the Coast Guard to expand operations; this proposal currently is under review with regulatory authorities pursuant to existing regulations. In the future, the Coast Guard expects only one to two new or existing LHG facilities per year may become operational or may seek to expand or modify maritime operations.

Additionally, the Coast Guard contacted several industry representatives and obtained cost estimates for completing a WSA. The estimates varied greatly and are a function of the waterway environment and the geographic location and uniqueness of each facility. Cost estimates were between \$80,000 and \$1.2 million per WSA. At the margin, we believe that these costs would have minimal effect on an LHG facility owner or operator’s decision to expand operations.

Finally, this proposed rule would benefit the economy by ensuring the proposed waterway is suitable for the safe and secure navigation of LNG or LHG vessels and the transfer of these cargoes.

The collection of information burden associated with this proposed rule is discussed in section D, below.

### B. 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.

Large corporations own the eight existing waterfront LNG facilities and we expect this type of ownership to continue in the future. This type of ownership also exists for the approximately 101 LHG facilities operating in the U.S. Therefore, 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. 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 to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

### C. 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 consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. 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.

### D. Collection of Information

This proposed rule would call for the collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

We do not expect new collection of information burdens would be placed on LNG facilities because these facilities are currently subject to FERC’s regulations. The current reporting requirements for LNG facilities are in line with industry practices and would require only an adjustment to an existing OMB-approved collection of information (OMB control number 1625–0049) as LNG facilities update their paperwork requirements. Similarly, the same collection of information for LHG facilities regarding WSAs and LOIs would require a revision if these facilities intend to

expand operations in the future or if there is new construction. However, the existing collection of information requires a revision to include WSAs for LHG facilities (WSAs that have been submitted to the Coast Guard are from LNG facilities only). We request comments from the public regarding the time it takes to complete a WSA, the burden hours associated to perform a WSA, and the labor costs.

This proposed rule modifies one existing OMB-approved collection, 1625-0049 (formerly 2115-0552). The request for approval of this Collection of Information is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

The summary of the revised collection follows:

*Title:* Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG).

*Summary of the Collection of Information:* The Coast Guard requires the submittal of a letter of intent (LOI) for LNG and LHG facilities that plan new construction or intend to expand existing operations and to alert the Coast Guard of transfers of LNG or LHG, in bulk. In addition, a waterway suitability assessment would be required for a facility that intends to expand maritime operations or a new construction, which requires an LOI.

*Need for Information:* The LOI is needed to alert the cognizant Coast Guard Captain of the Port (COTP) that a waterfront facility plans to conduct transfers of LNG or LHG, in bulk. It also provides a point of contact at the facility. Once the Coast Guard receives the letter, the COTP can direct the necessary enforcement activity to ensure that the operator complies with the other requirements in 33 CFR part 127. The LOI also provides the information used by the COTP to determine the suitability of the waterway, on which the waterfront facility is located, for LNG or LHG vessel traffic. Changes to the information in the LOI are required to be submitted whenever they occur.

*Proposed Use of Information:* This information is required to ensure COTPs learn of the opening or reopening of a waterfront facility handling LNG or LHG far enough in advance to allocate resources, to enforce construction and design standards, and to plan enforcement strategy. Also, COTPs would have the information necessary to properly evaluate the suitability of a waterway for vessels carrying LNG or LHG.

*Description of the Respondents:* Respondents are the facilities themselves.

*Number of Respondents:* The existing OMB-approved number of respondents is 109. There are plans now for future facilities to become operational.

*Frequency of Response:* The existing OMB-approved number of responses is 3,059 annually. This proposed rule would increase that number by 230. The total number of responses would be 3,289.

*Burden of Response:* The existing OMB-approved burden of response is the same for the proposed rule. We have maintained our estimates of the frequency of response for each item in the collection based on industry information, and we have added information regarding a WSA.

*Estimate of Total Annual Burden:* The existing OMB-approved total annual burden is 2,838 hours. This proposed rule would increase that number by 5,077 hours, which includes 4,928 hours for the addition of a WSA to the collection of information. All of the original items in the collection, notwithstanding the WSA, only account for a 149-hour increase. The estimated total annual burden would be 7,915 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

#### E. 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.

#### F. 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.

#### G. 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.

#### H. 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.

#### I. 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.

#### J. 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.

#### K. 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.

#### L. 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.

#### M. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.ID, 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. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(a), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This proposed regulation concerns the submission of an LOI and a WSA. This involves the gathering of data and information that would involve no physical change to the environment. A preliminary “Environmental Analysis Check List” supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. We seek any comments or information

that may lead to discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 127

Fire prevention, Harbors, Hazardous substances, Natural gas, Reporting and recordkeeping requirements, and Security measures.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 127 as follows:

#### PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

1. Revise the authority citation for part 127 to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1.

##### § 127.001 [Amended]

2. In § 127.001(c), remove the words “Sections 127.007(c), (d), and (e)” and add in their place the words “Sections 127.007(b), (c), and (d)”.

3. In § 127.001(e), remove the words “Sections 127.007(c), (d), and (e)” and add in their place the words “Sections 127.007(b), (c), and (d)”.

4. Revise § 127.007 to read as follows:

##### § 127.007 Letter of intent and waterway suitability assessment.

(a) An owner or operator intending to build a new waterfront facility handling LNG or LHG, or an owner or operator planning new construction to expand or modify marine terminal operations in an existing waterfront facility handling LNG or LHG, must submit a letter of intent (LOI) to the Captain of the Port (COTP) of the zone in which the facility is or will be located. The LOI must meet the requirements in paragraph (c) of this section.

(1) The owner or operator of an LNG facility must submit the LOI to the COTP no later than the date that the owner or operator files a pre-filing request with the Federal Energy Regulatory Commission (FERC) under 18 CFR parts 153 and 157, but, in all cases, at least one year prior to the start of construction.

(2) The owner or operator of an LHG facility must submit the LOI to the COTP no later than the date that the owner or operator files with the federal or state agency having jurisdiction, but, in all cases, at least one year prior to the start of construction.

(b) An owner or operator intending to reactivate an inactive existing waterfront facility must submit an LOI that meets paragraph (c) of this section to the COTP of the zone in which the facility is located.

(1) The owner or operator of an LNG facility must submit the LOI to the COTP no later than the date the owner or operator files a pre-filing request with FERC under 18 CFR parts 153 and 157, but, in all cases, at least one year prior to the start of LNG transfer operations.

(2) The owner or operator of an LHG facility must submit the LOI to the COTP no later than the date the owner or operator files with the federal or state agency having jurisdiction, but, in all cases, at least one year prior to the start of LHG transfer operations.

(c) Each LOI must contain—

(1) The name, address, and telephone number of the owner and operator;

(2) The name, address, and telephone number of the federal, state, or local agency having jurisdiction;

(3) The name, address, and telephone number of the facility;

(4) The physical location of the facility;

(5) A description of the facility;

(6) The LNG or LHG vessels’ characteristics and the frequency of LNG or LHG shipments to or from the facility; and

(7) Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG or LHG vessels en route to the facility, within at least 25 kilometers (15.5 miles) of the facility.

(d) The owner or operator who submits an LOI under paragraphs (a) or (b) must notify the COTP in writing within 15 days of any of the following:

(1) There is any change in the information submitted under paragraphs (c)(1) through (c)(7) of this section; or

(2) No LNG or LHG transfer operations are scheduled within the next 12 months.

(e) A facility owner or operator who intends to build a new waterfront LNG or LHG facility, or a facility owner or operator who plans new construction on an existing waterfront LNG or LHG facility, must file a waterway suitability assessment (WSA) with the COTP of the zone in which the facility is or will be located. The WSA must consist of a Preliminary WSA and a Follow-on WSA. A COTP may request additional information during review of the Preliminary WSA or Follow-on WSA.

(f) The Preliminary WSA must:

(1) Be submitted to the COTP with the LOI; and

(2) Provide an initial explanation of the following:

(i) Port characterization;

(ii) Characterization of the LNG or LHG facility and LNG or LHG tanker route;

(iii) Risk assessment for maritime safety and security;

(iv) Risk management strategies; and

(v) Resource needs for maritime safety, security, and response.

(g) The Follow-on WSA must:

(1) Be submitted to the COTP as follows:

(i) The owner or operator of an LNG facility must submit the Follow-on WSA to the COTP no later than the date the owner or operator files its application with FERC pursuant to 18 CFR parts 153 or 157, or if no application to FERC is required, at least 180 days before the owner or operator begins transferring LNG.

(ii) The owner or operator of an LHG facility must submit the Follow-on WSA to the COTP in all cases at least 180 days before the owner or operator begins transferring LHG.

(2) Contain a detailed analysis of the elements listed in §§ 127.009(d) and (e) of this part below.

(h) Until the facility begins operation, owners or operators must:

(1) Annually review their WSAs and submit a report to the COTP as to whether changes are required. The deadline for the required annual report should coincide with the date of the COTP's letter of recommendation, which indicates review and validation of the Follow-on WSA has been completed.

(2) In the event that revisions to the WSA are needed, report to the COTP the details of the necessary revisions, along with a timeline for completion.

(3) Update the WSA if there are any changes in conditions, such as changes to the port environment, the LNG or LHG facility, or the tanker route, that would affect the suitability of the waterway for LNG or LHG traffic.

(4) Submit a final report to the COTP at least 30 days, but not more than 60 days, prior to the start of operations.

5. Revise § 127.009 to read as follows:

**§ 127.009 Letter of recommendation.**

After the COTP receives the letter of intent under § 127.007(a) or (b), the COTP issues a letter of recommendation to the federal, state, or local government agencies having jurisdiction, as to the suitability of the waterway for LNG or LHG marine traffic, based on the—

(a) Information submitted under § 127.007;

(b) Density and character of marine traffic in the waterway;

(c) Locks, bridges, or other man-made obstructions in the waterway;

(d) Following factors adjacent to the facility such as:

(1) Depths of the water;

(2) Tidal range;

(3) Protection from high seas;

(4) Natural hazards, including reefs, rocks, and sandbars;

(5) Underwater pipelines and cables;

(6) Distance of berthed vessel from the channel and the width of the channel; and

(e) Other safety and security issues identified.

Dated: April 22, 2009.

**Howard L. Hime,**

*Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. E9-9639 Filed 4-27-09; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 21**

**RIN 2900-AN31**

**Vocational Rehabilitation and Employment Program—Self-Employment**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the vocational rehabilitation and employment regulations of the Department of Veterans Affairs (VA) concerning self-employment for individuals with qualifying disabilities. We are proposing changes that are intended to conform VA's regulations for self-employment programs for veterans, and for servicemembers awaiting discharge, to statutory provisions, including provisions limiting eligibility for certain supplies, equipment, stock, and license fees to individuals with the most severe service-connected disabilities. We are also proposing related changes in VA's regulations affecting eligibility for such assistance for certain veterans' children with birth defects in self-employment programs. In addition, we propose to amend our regulations regarding authority for approval of self-employment plans to make certain requirements less restrictive and less burdensome, remove a vague and overly broad requirement, make changes to reflect longstanding VA policy, and make nonsubstantive clarifying changes in our regulations affecting self-employment programs.

**DATES:** Comments must be received on or before June 29, 2009.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to the Director, Regulations Management (02REG), Department of

Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN31—Vocational Rehabilitation and Employment Program—Self-Employment." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461-9613 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** We propose to amend VA's regulations concerning self-employment in 38 CFR part 21 that are applicable to benefits and services under 38 U.S.C. chapter 31, Training and Rehabilitation for Veterans with Service-Connected Disabilities, and 38 U.S.C. chapter 18, Benefits for Children of Vietnam Veterans and Certain Other Veterans.

The Veterans' Benefits Act of 1996, Public Law 104-275 (enacted October 9, 1996), amended 38 U.S.C. 3104(a)(12) regarding the special assistance and supplies that VA can provide for individuals pursuing self-employment programs. Prior to the enactment of Public Law 104-275, only "the most severely disabled" individuals who required self-employment were, under 38 CFR 21.258, entitled to the special supplies, equipment, stock, and license fees described in 38 CFR 21.214(e). Public Law 104-275 amended 38 U.S.C. 3104(a)(12) by restricting the provision of those special supplies, equipment, stock, and license fees to individuals "with the most severe service-connected disabilities who require homebound training or self employment." We plan to address issues concerning training in the home (also known as homebound training) under 38 U.S.C. 3104(a)(12) in a future rulemaking. This rulemaking, like current § 21.258, concerns individuals who require self-employment, some of whom may also require homebound training. This proposed rule includes (in § 21.257 rather than current § 21.258) criteria