

to be posted and available for downloading from the FERC Web site (<http://www.ferc.gov>). One copy of the report must be retained by the respondent in its files.

(4) Intrastate pipelines filing Form No. 549D are no longer required to file Form No. 549—Intrastate Pipeline Annual Transportation Report after their March 31, 2011 filing.

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## 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:** Final rule.

**SUMMARY:** In this final rule, the Coast Guard revises the requirements for waterfront facilities handling liquefied natural gas (LNG) and liquefied hazardous gas (LHG). The revisions bring the regulations up to date with industry practices and Coast Guard policy implemented due to increased emphasis on security since the events of September 11, 2001. These revisions harmonize the Coast Guard's regulations for LNG with those established by the Federal Energy Regulatory Commission (FERC), the agency with exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG facility located onshore or within State waters. This rulemaking does not affect LNG deepwater ports.

**DATES:** This final rule is effective June 25, 2010. To the extent this rulemaking affects the collection of information in 33 CFR 127.007, we will not enforce the revised collection requirements until the collection is approved by the Office of Management and Budget (OMB). When OMB approves, we will publish notification in the **Federal Register**.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2007-27022 and are available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2007-27022 in the "Keyword" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Commander Patrick Clark, CG-5222, U.S. Coast Guard; telephone 202-372-1410, e-mail [Patrick.W.Clark@uscg.mil](mailto:Patrick.W.Clark@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

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#### I. 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
- NEPA National Environmental Policy Act of 1969
- NTTAA National Technology Transfer and Advancement Act
- NPRM Notice of proposed rulemaking

- NVIC Navigation and Vessel Inspection Circular
- OMB Office of Management and Budget
- U.S.C. United States Code
- WSA Waterway Suitability Assessment

#### II. Regulatory History

On April 28, 2009, we published in the **Federal Register** a notice of proposed rulemaking entitled "Revision of LNG and LHG Waterfront Facility General Requirements" (74 FR 19159). We received four letters commenting on the proposed rule, containing a total of 38 comments. No public meeting was requested and none was held.

#### III. Background

##### A. Basis and Purpose of the Final Rule

Over the last decade, the worldwide production and transportation of liquefied natural gas (LNG) has increased substantially. 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. Should domestic gas production not meet this demand, increased marine LNG imports may be needed to help resolve this likely shortfall. Currently, there are nine waterfront LNG facilities in the United States: eight 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 facilities 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 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 marine transfer area of 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 input, in a Letter of Recommendation (LOR), to an agency having jurisdiction for siting, construction, and operation. The LOR serves as the Coast Guard's recommendation to the jurisdictional agency as to the suitability of the waterway for LNG or LHG marine traffic on the waterway associated with the

proposed facility or modification to an existing facility.

In the case of LNG waterfront facilities regulated by FERC, the LOI has been augmented by a Waterway Suitability Assessment (WSA). The WSA is an applicant-prepared risk-based assessment designed to document and address all safety and security concerns related to the movement of LNG for a particular U.S. port or waterway. As discussed below, since 2005, FERC regulations have required prospective applicants for FERC authorization to site, construct, and operate LNG facilities to submit WSAs to the Coast Guard. The Coast Guard's Office of Operating and Environmental Standards (CG-5222) maintains guidance on preparation and submission of WSAs to the Coast Guard. Contact details are located under the section heading **FOR FURTHER INFORMATION CONTACT**.

In April 2009, the Coast Guard proposed a rule that 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, the Coast Guard proposed to establish the WSA requirement for both LNG and LHG facilities because of the similarities between those cargoes.

#### *B. Discussion of FERC Regulations With 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. The Coast Guard provided this information in the NPRM; we repeat it here for the convenience of the reader.

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 facility owners and operators to submit WSAs to the Coast Guard as part of the FERC pre-filing process. Although FERC regulations, not Coast Guard regulations, require the WSA, the Coast Guard considers the applicant's WSA in developing its LOR.

FERC requires applicants seeking FERC's authorization to site, construct, and operate new LNG facilities, and some applicants seeking authority to make modifications to an existing or approved LNG facility, to make an

initial filing to FERC and, concurrently, submit an 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 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 applicant must satisfy several requirements, including the requirement in 18 CFR 157.21(f)(13) that an 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 shall certify that the U.S. Coast Guard has indicated that a Follow-On WSA is not required, if appropriate."

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

#### **IV. Discussion of Comments and Changes**

The Coast Guard received letters from four commenters, containing a total of 38 comments on the NPRM. All comments received are available in the public docket for this rulemaking, where indicated under **ADDRESSES**. Below, we respond to all comments received, and describe changes made in response to specific comments.

##### *A. General Comments*

The Coast Guard received multiple comments expressing support for the proposed rule. In general, comments supported clarification of the existing regulatory regime for LNG and LHG marine transfer facilities. Specifically, the Coast Guard received one comment expressing general support for the proposed rule, one comment urging the Coast Guard to implement the proposed revisions of its regulations, one comment indicating the commenter "strongly supports" the Coast Guard's efforts to reconcile its regulations with FERC regulations, and one comment acknowledging the "importance of, and the Coast Guard's desire for, a

coordinated, clearly-defined review process" resulting in a recommendation to the permitting authority. Additional supportive comments are discussed below. The Coast Guard appreciates these supportive comments.

Some commenters made reference to the role the LOI, WSA, and LOR may play in other agencies' environmental review of LNG or LHG projects. The Coast Guard understands that a permitting agency may use a variety of documents, including the LOI, WSA, or LOR, to aid in the development of its environmental analysis. These documents may contain environmental data: for example, § 127.007 requires the LOI to include charts identifying environmentally sensitive areas. Nonetheless, maritime safety and security concerns, rather than environmental review, are the primary drivers in creation of the LOI, WSA, and LOR, and the Coast Guard encourages Federal, State, and local agencies to view these documents in that context.

Finally, one commenter noted that the NPRM did not expressly state that the revised regulations would become effective on a prospective basis. For clarity, the Coast Guard confirms that the revised regulations will become effective upon the date indicated in the **DATES** section above.

##### *B. Comments on the Letter of Intent*

Two commenters made comments regarding § 127.007(a), which discusses LOIs.

First, one commenter noted slightly different language between §§ 127.007(a) and (e), in that the proposed § 127.007(a) required an LOI for construction expanding or modifying terminal (facility) operations, while § 127.007(e) required a WSA for any new construction. Although the Coast Guard did not intend any substantive difference in the wording of these two provisions, we agree that the differing language could result in confusion. The commenter recommended that § 127.007(e) read the same as § 127.007(a), to make this point clearer. The Coast Guard agrees that the two provisions should be consistent and has revised the proposed §§ 127.007(a) and (e) for clarity and consistency. The text of the final rule reflects this change.

Second, the same commenter recommended that § 127.007(a) be changed to trigger the LOI requirement when construction "would change the conditions reported in the last WSA" or, in the alternative, when the construction "also requires filing a permit request with the Federal Energy Regulatory Commission (FERC)." Although the Coast Guard finds these

recommendations too narrow, it concurs with the broader point that the LOI requirement is triggered when an applicant files with a permitting agency having jurisdiction. Section 127.007(a) applies to facilities not regulated by FERC—for example, LHG facilities—and facilities that do not yet have a WSA. For that reason, the Coast Guard declines to adopt the commenter's recommendations as written. As stated in the proposed regulatory text, however, the deadline for submitting the LOI is based on the owner or operator's decision to file with the permitting agency having jurisdiction. The Coast Guard does not require an LOI if the owner or operator does not file with a permitting agency having jurisdiction. In the unlikely event that no permitting agency has jurisdiction or no filing is required, the Coast Guard will not require an LOI or issue an LOR; however, the COTP retains his or her authority to ensure the maritime safety and security of the waterway.

The commenter noted that § 127.007 would require an LOI 1 year prior to the terminal (facility) improving its moorings by increasing hook or bollard capacity, modifying a gangway to improve access, or adding mooring monitoring systems. The Coast Guard concurs with this characterization if such expansion or modification of the marine transfer area of the facility requires the owner or operator to file with the permitting agency having jurisdiction over the facility and the expansion or modification results in an increase in the size and/or frequency of the LNG or LHG marine traffic on the waterway associated with the facility. Accordingly, the Coast Guard has modified the text of §§ 127.007(a) and (e) to specify that an LOI is required for construction, expansion, or modification that would increase the size and/or frequency of the LNG or LHG marine traffic on the waterway associated with the proposed facility or modification to an existing facility.

The commenter implied that it is undesirable to require an LOI 1 year prior to the type of improvements listed. However, such advance notice is necessary to the Coast Guard's maritime safety and security missions. If an owner or operator submits an LOI for a modification that does not require 1 year to review, the Coast Guard expects to issue the LOR within a shorter timeframe.

Separately, a different commenter stated that requiring an LOI 1 year prior to construction is not a FERC requirement and therefore "appears inconsistent with the goals of harmonizing" and aligning Coast Guard

regulations with FERC regulations. Aligning Coast Guard regulations with FERC regulations is one goal of this rulemaking; the 1-year period between LOI and construction is designed to work with the FERC pre-filing process in which the LOI must be submitted at least 180 days before the applicant files its application for authorization to construct the facility with FERC. However, Coast Guard regulations must be broader and encompass more situations than FERC's regulations, in part because they apply to facilities FERC does not regulate. The Coast Guard requires the LOI at least 1 year prior to construction in order to allow adequate time for risk assessment.

Finally, to improve clarity, the Coast Guard added language to § 127.007(c)(2) specifying that the LOI must include the name, address, and telephone number of the Federal, State, or local agency having jurisdiction "for siting, construction, and operation."

#### *C. Comments on Waterway Safety, and the Waterway Suitability Assessment*

Two commenters commented on issues involving the WSA.

One commenter suggested § 127.007(g) be changed to require that WSAs contain a detailed analysis of the elements listed in §§ 127.007(f)(2) and 127.009(e) of this part. The commenter expressed concern that the proposed regulation required the Follow-on WSA to contain a detailed analysis of the elements the Coast Guard will consider in issuing the LOR but, as proposed, did not require a detailed analysis of the elements listed in the Preliminary WSA. The commenter correctly pointed out that this omission conflicted with our explanation of the proposed rule in the preamble to the NPRM, in which we indicated that 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." The Coast Guard has modified the text of the final rule to include § 127.007(f)(2) as well as §§ 127.009(d) and (e).

A different commenter made general comments about the waterway suitability assessment process. This commenter said risk to the waterway must be adequately assessed, and that "leaving such an important review as voluntary" would be inadequate. The Coast Guard concurs that assessment of the waterway is vital. The owner or operator's WSA and the Coast Guard's review of that document are key elements of the risk management process. Coast Guard review ensures

that the owner or operator has adequately assessed potential risks associated with vessel transit in the context of waterway safety and security as part of the Coast Guard's cooperation with the permitting agency. Because of the importance of this process, FERC regulations have made WSAs mandatory since 2005 for LNG facilities located onshore and in State waters. This rule will align Coast Guard regulations with existing FERC regulations for the mandatory assessment of the waterway, and will extend waterway suitability assessment measures to LHG facilities as well.

Additionally, the commenter sought "any data we can get from a Waterway Suitability Assessment" and, specifically, the "proponent's chart identifying what they consider environmentally sensitive." The Coast Guard strives to fully involve all port-level stakeholders in the Coast Guard's review of an applicant's WSA. When feasible, those stakeholders include those local and State entities with jurisdiction over a proposed facility. This rulemaking does not alter that process. Similarly, this rulemaking does not alter the availability of data submitted to the Coast Guard in the owner or operator's WSA.

#### *D. Comments on Frequency of Shipments*

One commenter submitted comments regarding the requirement that each LOI contain information on the frequency of LNG or LHG shipments to or from the facility. Specifically, the commenter described the requirement as "unprecedented in regulation" and "impossible to reliably assess." The commenter stated that the "frequency and number of vessels has no bearing on" waterway suitability, and recommended rewording § 127.007(c)(6) to exclude mention of the frequency of shipments. The Coast Guard disagrees with these comments and recommendation.

The requirement that the LOI contain "the frequency of LNG shipments to or from the facility" was present in the 1988 final rule that created § 127.007, and has remained in place since that date (53 FR 3370). When the requirement was extended to LHG in 1995, the preamble to that final rule, published in the **Federal Register** on August 3, 1995, stated that the "purpose of the 'Letter of Intent' is to give the [Captain of the Port] general notice of both the type and estimated number of LHG vessels that may call at the facility and the size of shipments. This information can easily be obtained from the facility-design specifications" (60 FR

39788). Every LOI provided by an owner or operator to the Coast Guard has included information on the frequency of shipments. With the exception of re-numbering the paragraph and re-ordering the terms “LNG” and “LHG,” the NPRM did not propose changes to this requirement, and the Coast Guard intends no change to the current methods of compliance.

For all these reasons, the Coast Guard does not believe that the frequency of shipments is impossible to assess. As discussed in more detail below, the Coast Guard’s mission of public stewardship requires that we consider activity in the waterway, and the impact of LNG and LHG vessel traffic, when evaluating waterway suitability. Therefore, the Coast Guard believes it necessary to include this information in the LOI.

#### *E. Comments on Evaluating the Density and Character of Marine Traffic*

One commenter submitted several comments on whether the Coast Guard should consider the density and character of marine traffic in a waterway when evaluating the suitability of the waterway for LNG or LHG vessel transit. Specifically, the commenter recommended deleting § 127.009(b) because the commenter feels that considering other marine traffic favors existing waterway uses to the detriment of new or expanding waterway uses not subject to a waterway suitability assessment requirement, and “puts the Coast Guard in a position of determining which waterway user should have usage rights and which should not.”

Contrary to the commenter’s statement that these are “Commerce issues beyond the intended purpose of the Coast Guard,” the Coast Guard engages daily in managing the safe and secure movement of vessels, particularly vessels in interstate commerce, and in balancing the needs of many different waterway users. To clarify, however, the LOR does not “determine which waterway user should have usage rights”; rather, the LOR is the Coast Guard’s recommendation to the jurisdictional agency as to the suitability of the waterway for LNG or LHG marine traffic.

The commenter notes that port management plans and safety and security zones are tools the Coast Guard uses to manage competing waterway priorities; other tools include notices of arrival and departure, regulated navigation areas, navigational “rules of the road,” and COTP orders. To take the latter example, under the authority of the Ports and Waterway Safety Act or

the Maritime Transportation Security Act of 2002, the Coast Guard COTP may order any vessel, whether a recreational craft or an LNG vessel, to make way for another when necessary for waterway safety and security. Such plans, zones, and orders take place pursuant to their own administrative processes, separate from the waterway suitability assessment or LOR. The LOR, by contrast, serves as the Coast Guard’s recommendation to the agency having jurisdiction over siting, construction, and/or operation on whether the Coast Guard considers the waterway associated with a proposed facility or modification to an existing facility suitable for the LNG or LHG marine traffic. Additionally, the LOR often contains information helpful to the jurisdictional agencies for improving safety and security of the waterway for LNG or LHG marine traffic.

Input based solely on whether the vessel could physically transit the waterway would not serve the Coast Guard’s missions or the needs of the agencies to which the LOR is issued, and would needlessly withhold the Coast Guard’s expertise in waterway management. The Coast Guard’s evaluation of waterway suitability necessarily includes evaluation of maritime safety and security risks posed by and to other vessels. Therefore, the Coast Guard declines the commenter’s recommendation that we delete § 127.009(b).

#### *F. Comments on the Letter of Recommendation*

First, to improve clarity, the Coast Guard added language to § 127.009 specifying that the LOR is issued to the Federal, State, or local agency having jurisdiction “for siting, construction, and operation.”

In addition, one commenter made comments regarding the LOR.

Specifically, the commenter urged the Coast Guard to “provide for contemporaneous notice” of the LOR to the owner or operator. The Coast Guard had intended that owners or operators receive a copy of the LOR, and we agree that the regulation should reflect that practice. Accordingly, the final rule specifies that the owner or operator will receive a copy of the LOR at the same time the Coast Guard sends the LOR to the government agency having jurisdiction for siting, construction, and operation.

The same commenter “believes that the applicant should have an opportunity to seek clarification or reconsideration of provisions contained in the LOR at the time of its issuance to other jurisdictional agencies.”

Recommendations expressed in the LOR represent the Coast Guard’s professional input and are provided in the context of the Federal, State, or local jurisdictional agency’s proceedings, which provide for participation and public comments. Therefore, additional information may be submitted by the owner or operator, the public, or the Coast Guard, to the Federal, State, or local agency with jurisdiction. To the extent the comment addresses a process for clarifying or reconsidering the recommendation contained in a particular LOR, such a process is outside the scope of this rulemaking. This rule aligns FERC and Coast Guard regulations with regard to the timing and content of submissions under 33 CFR 127.007, and clarifies the recipients of the LOR under § 127.009.

#### *G. Comments on Timely Issuance of the Letter of Recommendation*

One commenter recommended modifying § 127.009 to include a timeline for Coast Guard review of the WSA and issuance of the LOR. The Coast Guard shares the commenter’s desire for timely review of LOIs and WSAs, and strives to issue LORs promptly. Current policy states that the COTP should issue the LOR before the permitting agency completes its environmental review. However, the Coast Guard does not intend to restrict the COTP in his or her review, especially given the possibility of changing circumstances, and does not intend to establish a right to a response in a specified time.

#### *H. Comments on the Differences Between LNG and LHG*

One commenter submitted comments on the differences between LNG and LHG. The commenter did not object to applying similar regulatory requirements to both LNG and LHG vessels, but asked the Coast Guard to “recognize and maintain the important factual distinctions between LNG and LHG.” Specifically, the commenter urged that “regulatory requirements that may be appropriate to the regulation of LHG may not be appropriate or necessary for transfer operations concerning LNG.”

The Coast Guard understands the commenter’s concern. We recognize that the chemical properties of LNG differ from those of LHG, and that the risk of transporting these materials does vary. We also acknowledge, as we have done in the past, the well-documented safety record associated with LNG vessel transport. At this time, the Coast Guard finds no reason to apply different waterway suitability methodologies to these materials. However, the results of

a waterway suitability assessment are always specific to the commodity and waterway being evaluated.

#### *I. Other Changes*

33 CFR 127.005 defines a facility as “either a waterfront facility handling LHG or a waterfront facility handling LNG.” These terms are clearly defined to mean any structure capable of being used to transfer LNG or LHG, in bulk, to or from a vessel. For consistency, and to avoid redundancy, the Coast Guard has modified the text of the final rule to use the term “facility” instead of “waterfront facility.”

#### **V. Regulatory Analyses**

We developed this 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 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.

Public comments on the NPRM are summarized in Part IV of this publication. We received no public comments that would alter our assessment of the impacts discussed in the NPRM.

In this rule, the Coast Guard seeks to revise the requirements for waterfront facilities handling LNG or LHG. For LNG waterfront facilities, this rulemaking aligns the Coast Guard’s submission deadlines with those of FERC. This rulemaking aligns the Coast Guard’s submission deadlines for LHG waterfront facilities with those of LNG waterfront facilities. The Coast Guard believes it is necessary to require a WSA for both types of facilities and to provide consistency with FERC regulations regarding LNG facilities. This rule also provides consistency for other Coast Guard regulations that address both LNG and LHG facilities.

As noted above, the LOI and WSA are not new requirements for LNG facilities. Starting in 2005, FERC regulations required that LNG facility owners and 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 procedure for the owner or operator to submit a WSA to the Coast Guard is not new for the LNG industry because LNG facility owners and operators have been

submitting WSAs to the Coast Guard since 2005. As of December 2009, we have received 19 WSAs for LNG waterfront facilities with only one submittal since July 2008.

We expect that 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 rule, because the LNG industry has been conducting WSAs as a common industry practice. We also expect existing LNG facilities to continue to operate according to industry standards and similarly to not incur additional regulatory costs. The rule eliminates 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. However, the submission of a WSA for LHG facilities is a new requirement, but will apply only to new LHG facilities or existing facilities that seek to expand or modify operations that result in an increase in the size and/or frequency of LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility. 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. We believe that these costs will have minimal effect on an LHG facility owner or operator’s decision to expand operations.

Finally, this rule benefits 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 rule is discussed in section V.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.

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no public comments that would alter our certification in the NPRM. We have found no additional data or information that would change our findings in the NPRM.

Large corporations own the nine 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 159 LHG facilities operating in the United States. Therefore, 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.

##### *C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. 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.

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).

##### *D. Collection of Information*

This rule will 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.

This rule modifies one existing OMB-approved collection, 1625-0049. The summary of the revised collection follows:

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

*OMB Control No.:* 1625-0049.

*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 to alert the Coast Guard of transfers of LNG or LHG, in bulk. In addition, a waterway suitability assessment will be required for a facility that intends new construction, expansion or modification of an existing facility, which results in an increase in the size and/or frequency of LNG or LHG marine traffic on the associated waterway.

*Need for Information:* The LOI is needed to alert the cognizant Coast Guard Captain of the Port (COTP) that a 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 all of the requirements in 33 CFR part 127. The LOI also provides some of the information used by the COTP to determine the suitability of the waterway associated with a proposed facility or modification to an existing facility for LNG or LHG marine traffic. Changes to the information in the LOI are required to be submitted whenever they occur.

*Use of Information:* This information is required to ensure COTPs learn of the opening or reopening of a facility handling LNG or LHG far enough in advance to allocate resources and to plan enforcement strategies. COTPs will also 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 107. Based on our data, this rule will increase that number by 61 respondents to a total of 168 respondents.

*Frequency of Response:* The existing OMB-approved number of responses is 3,059 annually. This rule will increase

that number by 1,936. The total number of responses will be 4,995.

*Burden of Response:* The existing OMB-approved burden of response is the same for the 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 rule will increase that number by 6,666 hours, which includes 4,928 hours for the addition of a WSA to the collection of information, and 1,738 hours to account for a change in the number of respondents. The estimated total annual burden will be 9,504 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, the Coast Guard will not enforce the revisions this rule makes to information collection requirements at 33 CFR 127.007 until the collection is approved by OMB. We will publish a document in the **Federal Register** informing the public of OMB's decision to approve, modify, or disapprove the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### *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 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 (adjusted for inflation) or more in any 1 year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *G. Taking of Private Property*

This rule will not cause 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 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 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.

#### *J. 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.

#### *K. 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.

#### *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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 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 concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(a) of the Instruction. This rule involves regulations which are editorial or procedural, such as those updating addresses or establishing application procedures. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### 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 amends 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. Amend § 127.001:

■ A. In paragraph (c), by removing the words “Sections 127.007(c), (d), and (e)” and adding in their place the words “Sections 127.007(b), (c), and (d)”.

■ B. In paragraph (e), by removing the words “Sections 127.007(c), (d), and (e)” and adding in their place the words “Sections 127.007(b), (c), and (d)”.

■ 3. 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 facility handling LNG or LHG, or an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, 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 1 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 1 year prior to the start of construction.

(b) An owner or operator intending to reactivate an inactive existing 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 1 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 1 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 for siting, construction, and operation;

(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) of this section 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) An owner or operator intending to build a new LNG or LHG facility, or an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must file or update as appropriate 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 §§ 127.007(f)(2), 127.009(d), and 127.009(e) of this part.

(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.

■ 4. 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 as to the suitability of the waterway for LNG or LHG marine traffic to the Federal, State, or local government agencies having jurisdiction for siting, construction, and operation, and, at the same time, sends a copy to the owner or operator, 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) 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.

**F. J. Sturm,**

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

[FR Doc. 2010-12680 Filed 5-25-10; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2009-1132]

RIN 1625-AA00

**Safety Zone; AVI May Fireworks Display, Laughlin, NV**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone, on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 8 p.m. to 9:45 p.m. on May 30, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-1132 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-1132 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, Coast Guard; telephone 619-278-7262, e-mail [Corey.R.McDonald@uscg.mil](mailto:Corey.R.McDonald@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On March 2, 2010 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; AVI May Fireworks Display; Laughlin, Nevada, NV in the **Federal Register** (75 FR 9370). We received 0 comments on the

proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

**Basis and Purpose**

The AVI Resort and Casino is sponsoring the AVI May fireworks display, which is to be held at the AVI Resort and Casino on the Lower Colorado River in Laughlin, Nevada. A temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

**Discussion of Comments and Changes**

There were no comments submitted and no changes were made to the regulation.

**Discussion of Rule**

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV in support of the AVI May fireworks display adjacent to the AVI Resort and Casino on the Lower Colorado River, Laughlin, NV. The safety zone will be effective from 8 p.m. to 9:45 a.m. on May 30, 2010. The safety zone is set as an 800 foot radius around the firing site in approximate position: 35°00.45' N, 114°38.18' W.

**Regulatory Analyses**

We developed this 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.

**Regulatory Planning and Review**

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. This determination is based on the size and location of the safety zone. While vessels will not be allowed to transit through the designated safety