

or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

This action is not intended to change existing requirements for compliance dates contained in final rules published before January 1, 2013. Therefore, all final rules published by FDA in the **Federal Register** before January 1, 2013, will still go into effect on the date stated in the respective final rule.

We generally encourage industry to comply with new labeling regulations as quickly as feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

In rulemaking that began with publication of a proposed rule on April 15, 1996 (61 FR 16422), and ended with a final rule on December 24, 1996, we provided notice and an opportunity for comment on the practice of establishing uniform compliance dates by issuance of a final rule announcing the date. Receiving no comments objecting to this practice, we find any further rulemaking unnecessary for establishment of the uniform compliance date. Nonetheless, under 21 CFR 10.40(e)(1), we are providing an opportunity for comment on whether this uniform compliance date should be modified or revoked.

The new uniform compliance date will apply only to final FDA food labeling regulations that require changes in the labeling of food products and that publish after January 1, 2013, and before December 31, 2014. Those regulations will specifically identify January 1, 2016, as their compliance date. All food products subject to the January 1, 2016, compliance date must comply with the appropriate regulations when initially

introduced into interstate commerce on or after January 1, 2016. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2016, we will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

## II. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to <http://www.regulations.gov>. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

Dated: November 20, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012-28817 Filed 11-27-12; 8:45 am]

**BILLING CODE 4160-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 127

[Docket No. USCG-2011-0227]

RIN 1625-AB67

#### Reconsideration of Letters of Recommendation for Waterfront Facilities Handling LNG and LHG

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule clarifies the role and purpose of the Letter of Recommendation (LOR) issued by the Coast Guard Captain of the Port regarding the suitability of a waterway for liquefied natural gas (LNG) or liquefied hazardous gas (LHG) marine traffic. It also establishes a separate process for reconsideration of LORs by the Coast Guard. The process applies only to LORs issued after the effective date of the rule.

**DATES:** This final rule is effective December 28, 2012.

**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-2011-0227 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> and inserting “USCG-2011-0227” in the “Search” box.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ken Smith (CG-OES-2), U.S. Coast Guard; telephone (202) 372-1413, email [Ken.A.Smith@uscg.mil](mailto:Ken.A.Smith@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

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#### I. Abbreviations

- APA Administrative Procedure Act
- 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
- NPRM Notice of proposed rulemaking
- Pub. L. Public Law
- PWSA Ports and Waterways Safety Act of 1972, as amended
- U.S.C. United States Code

#### II. Regulatory History

On December 16, 2011, we published a notice of proposed rulemaking (NPRM) entitled “Reconsideration of Letters of Recommendation for Waterfront Facilities Handling LNG and LHG” in the **Federal Register** (76 FR

78188). We received two letters commenting on the proposed rule. No public meeting was requested and none was held.

### III. Basis and Purpose

Under existing regulations contained in 33 CFR part 127, an owner or operator intending to build a new waterfront facility handling liquefied natural gas (LNG) or liquefied hazardous gas (LHG), or planning new construction to expand or modify marine terminal operations in an existing waterfront facility that would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with the 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 COTP then issues, to the Federal, State, or local government agencies having jurisdiction for siting, construction, and operation of the facility, a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic related to the facility.

The Coast Guard issues LORs pursuant to the authority of the Ports and Waterways Safety Act of 1972, as amended (PWSA) (33 U.S.C. 1221 *et seq.*). Section 813 of the Coast Guard Authorization Act of 2010 also directs the Coast Guard to make a recommendation to the Federal Energy Regulatory Commission (FERC) as to the suitability of marine traffic associated with a proposed waterside LNG facility (Pub. L. 111–281, 124 Stat. 2905, 2999) (Oct. 15, 2010), and the LOR meets that requirement. This rule clarifies the role and purpose of the LOR, and establishes a separate process for reconsideration of LORs issued by the Coast Guard. This clarification and establishment of a new process are necessary because of confusion caused in part by the past practice of reconsidering LORs using the appeals process set forth in 33 CFR 127.015. We issue this final rule under the authority of the statutes already described, as well as Department of Homeland Security Delegation No. 0170.1 and 33 CFR subpart 1.05.

### IV. Background

As described above, the Coast Guard issues an LOR in response to an LOI received from an owner or operator intending to build a new waterfront facility handling LNG or LHG, or planning new construction to expand or modify marine terminal operations in an existing facility that would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the

waterway associated with the proposed facility or modification to an existing facility. The LOR is intended to provide an expert, unbiased recommendation as to whether the waterway and port infrastructure can safely and securely support the anticipated marine traffic associated with the new or modified facility.

Prior to May 2010, the COTP issued the LOR to the owner or operator of the facility as well as to the State and local government agencies with jurisdiction. However, in 2010 the Coast Guard changed that process in a final rule updating the LOI and LOR regulations (“Revision of LNG and LHG Waterfront Facility General Requirements,” 75 FR 29420 (May 26, 2010)). Currently, the Coast Guard issues the LOR to the Federal, State, or local government agency having jurisdiction for siting, construction, and operation of the waterfront facility (referred to in this document as the “jurisdictional agency”), and sends a copy to the owner or operator of the proposed facility. The majority of recent LOR recipients have been facilities handling LNG, and FERC is the jurisdictional agency with exclusive authority to approve or deny an application for the siting, construction, expansion, and operation of an LNG terminal. FERC has incorporated into its regulations the Coast Guard’s requirement that the facility owner or operator submit an LOI (33 CFR 127.007), making submission of the LOI to the Coast Guard a required element of the facility owner or operator’s application for FERC approval (18 CFR 157.21(a)(1)). Following the receipt of the facility owner or operator’s LOI, the COTP issues the LOR to FERC, as part of FERC’s public comment and decision making process, as a function of the Coast Guard’s subject matter expertise (33 CFR 127.009). Unlike the LOI, the LOR is not a pre-filing or a permitting requirement under FERC regulations, and is not a required element of the facility owner or operator’s application to FERC. The LOR is the Coast Guard’s “comment” on FERC’s proposed action.

Several issued LORs have invited the recipient to request reconsideration of the LOR pursuant to 33 CFR 127.015, which provides that “[a]ny person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.” The process set forth in § 127.015 is the same that an owner or operator would use to appeal agency actions described elsewhere in Part 127, such as a COTP’s Order to suspend operations. The use of § 127.015 to request reconsideration of

LORs, however, has led to confusion about the nature and proper role of the LOR. This is in part because use of the words “action” and “final agency action” in § 127.015 create confusion as to whether the LOR is an agency action for purposes of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). While we believe LORs should be subject to internal Coast Guard review, we did not intend to suggest that an LOR is an agency action, or that the LOR conveys a right or obligation.

As we explained in the NPRM, the LOR is not an “agency action” as that term is defined by the APA or understood in the context of enforceable legal actions. To constitute agency action for purposes of the APA, an activity must constitute, in whole or in part, an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act (5 U.S.C. 551(13)). The LOR is none of these. The LOR neither entitles nor forbids an owner or operator to construct or modify an LNG or LHG facility. The Coast Guard has no authority to site or license waterfront facilities handling LNG or LHG. Rather, the Coast Guard provides its LOR to an agency that does have that authority—the jurisdictional agency—to inform that agency’s review of the siting, construction, or operation of a facility. The LOR is a recommendation, and is not legally enforceable on or by any agency or person, including the Coast Guard.

As discussed above, we believe that some of the past confusion regarding the nature of LORs stems from the Coast Guard’s use of 33 CFR 127.015 for LOR reconsiderations. The process in § 127.015 is designed for appeals of agency actions taken under the authority of Part 127,<sup>1</sup> and using that same process for internal reconsideration of LORs inadvertently caused confusion between the two. In particular, § 127.015 applies to “[a]ny person directly affected by an action taken under this part,” and using that language in reference to an unenforceable recommendation is inapt.

The Coast Guard seeks to resolve the resulting confusion and, further, believes the process in § 127.015 is inappropriately complicated and lengthy in light of the LOR’s role as a recommendation to another agency in the context of that agency’s permitting

<sup>1</sup> The Coast Guard does take agency action with respect to LNG and LHG facilities when it enforces its rules addressing the operation, maintenance, personnel training, firefighting, and security of the marine transfer area of waterfront facilities that handle LNG or LHG cargos, and when the COTP issues an Order directing vessel operations. See the detailed discussion in the NPRM (76 FR 78189).

process. The LOR is intended to inform the jurisdictional agency's process, and therefore should be available to the jurisdictional agency early in that process. A reconsideration process that results in revisions to the LOR after the jurisdictional agency's decision does not serve the purpose of the LOR.

## V. Discussion of Comments and Changes

The Coast Guard received two letters commenting on this proposed rulemaking: one from the Attorney General for the State of Rhode Island, and one from the Rhode Island Department of Environmental Management. Both commenters expressed the opinion that issuance of an LOR constitutes an agency action under the APA, and one expressed the opinion that the issuance of an LOR is a major federal action that triggers the environmental impact analysis requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370h). The Coast Guard disagrees with these comments.

Pursuant to the Natural Gas Act, as amended, FERC possesses the *exclusive* authority to approve or deny an application for the siting, construction, expansion, and operation of a waterfront LNG facility (see 15 U.S.C. 717b(e)). Similarly, for proposals to site, construct, expand, or operate a waterfront LHG facility, the agency with jurisdiction (Federal, State, or local) over the project possesses approval authority. The agency with jurisdiction over the proposed action of siting, constructing, or operating the waterfront LNG or LHG facility serves as the lead agency responsible for complying with the applicable environmental review requirements.

Issuance of an LOR is not an "action" by the Coast Guard under the APA or NEPA. The LOR is not the functional equivalent of a permit or a form of permission that substantively affects a license, nor is it a "determination" that can be enforced. The Coast Guard has no jurisdiction to authorize the siting, construction, and operation of waterfront LNG and LHG facilities. Jurisdictional agencies, such as FERC, are not required to issue or deny a license or other authorization based on the recommendations contained in an LOR, or impose any recommended mitigation measures as terms of the authorization, even where the LOR is required. The Coast Guard has no authority over the content of the jurisdictional agency's license or permit. Although the Coast Guard is required to provide recommendations to

FERC under section 813 of the Coast Guard Authorization Act of 2010, (Pub. L. 111–281, 124 Stat. 2905, 2999 (Oct. 15, 2010)), FERC is not prohibited from issuing an order without having received a Coast Guard recommendation. For these reasons, the LOR does not "substantively affect" a license or licensing process as suggested by the commenters. The LOR merely provides information for the jurisdictional agency to consider in its own deliberative process.

Furthermore, issuing an LOR neither authorizes nor prohibits vessel transit to or from the LNG or LHG facility. If safety or security concerns prompted the Coast Guard to address vessel operations near the facility, the Coast Guard Captain of the Port (COTP) would do so in a COTP order; that COTP order would be issued pursuant to specific authority granted by the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221 *et seq.*) that is wholly independent of, and does not rely on or enforce, an LOR. To interpret the LOR as a Federal agency action under the APA would impermissibly detract from the jurisdictional agency's authority to license the siting, construction, and operation of LNG and LHG waterfront facilities.

Issuing an LOR is not a major Federal action that triggers an independent duty to prepare an environmental impact analysis under NEPA. NEPA requires FERC, as the responsible official for the permitting process, to consult with agencies that have special expertise with respect to any environmental impact involved (42 U.S.C. 4332(C)). There is no requirement, however, that the agency consulted prepare a separate environmental impact statement (42 U.S.C. 4332; see also 40 CFR 1501.5). The Coast Guard, as an agency with subject matter expertise in matters affecting the safety and security of the waterway, serves as a cooperating agency to the jurisdictional agency (see 40 CFR 1501.6). In this role as a cooperating agency, and in accordance with 33 CFR Part 127, the Coast Guard makes its recommendation as to the suitability of the waterway to the Federal, State, or local government agency with jurisdiction. This recommendation, communicated in the LOR, is a document to be used in the jurisdictional agency's permitting process. There is no requirement that it independently comply with NEPA or other environmental compliance statutes.

For the reasons explained above, the LOR is not an "agency action" under the APA or a major Federal action under NEPA. The Coast Guard has made no

change to the proposed rule in response to the comments received.

The Coast Guard did change the rule by adding the words "Indian tribal government" to the list of entities that may request reconsideration of the LOR pursuant to the revised § 127.009(c), with conforming changes in revised § 127.009(d). As we explained in our NPRM, new § 127.009(c) is intended to provide opportunity for additional discussion with governmental entities in the vicinity of the facility who may have unique information about the safety and security of the waterway (76 FR 78190). In our NPRM we provided notice and opportunity for public comment on this optional participation of local government entities in the reconsideration process. Like State and local governments, Indian tribal governments in the vicinity of a facility may be able to provide unique information regarding safety and security issues affecting the suitability of certain waterways, and logically would be included among the entities that may choose to request reconsideration. Adding Indian tribal governments to the list of entities will avoid any ambiguity as to their inclusion, and does not alter the intent or expected effect of the rule.

Separately, the Coast Guard slightly reworded new § 127.010(c)(1) for clarity. Both changes are nonsubstantive clarifications for which prior notice and public comment is unnecessary under 5 U.S.C. 553(b)(B).

## VI. Regulatory Analyses

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

### A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the final rule has not been

reviewed by the Office of Management and Budget.

We received no public comments from industry and we received no additional information or data that would alter our assessment of the NPRM. Therefore, we adopt the Preliminary Regulatory Analysis for the NPRM as final. A summary of the analysis follows:

This rule clarifies the role and purpose of the LORs issued by the Coast Guard COTP regarding the suitability of a waterway for LNG or LHG marine traffic. It also provides a separate process for LOR reconsideration for facility owners or operators and State, local, or Indian tribal government in the vicinity of the facility. If an LNG or LHG facility owner or operator or State, local, or Indian tribal government were to seek reconsideration of an LOR, a written request would be sent to the COTP who issued the LOR, and a copy would be sent to the jurisdictional agency. The process applies only to LORs issued after the effective date of the rule.

We do not expect this rule to impose new regulatory costs on the LNG/LHG industry because an LNG or LHG facility owner or operator and State, local, or Indian tribal government in the vicinity of the facility will only request reconsideration if it does not agree with the recommendation. The option to request reconsideration of an LOR has been an industry practice for several years. Since 2007, there has been an average of about three requests for reconsiderations annually. As previously discussed, this rule replaces the existing process for reconsideration with the process in new § 127.010, and applies to new LORs issued after the effective date of the rule, not to LORs already issued. For these reasons, no change in either the burden or the frequency of requests is projected as a result of this rulemaking. Although market conditions may change in the future, the Coast Guard does not have any data to indicate the receipt of new requests for reconsideration of LORs within the foreseeable future.

#### *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. The Coast Guard received no comments from

the Small Business Administration on this rule.

Large corporations own the 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. In addition, as stated above, the Coast Guard does not expect a change in either the burden or the frequency of requests as a result of this rulemaking. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it 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 one 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. This rule does give Indian tribal governments in the vicinity of the facility the option to request reconsideration of Coast Guard LORs for that facility, but 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 (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. 4321-4370h), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves creating a separate process for reconsideration of LORs and is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(a) of the Instruction, which includes regulations that 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 the **ADDRESSES** section of this preamble.

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

Fire prevention, Harbors, Hazardous substances, Natural gas, Reporting and recordkeeping requirements, 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. The authority citation for part 127 continues to read as follows:

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

■ 2. Revise § 127.009 to read as follows:

#### § 127.009 Letter of recommendation.

(a) After the COTP receives the Letter of Intent under § 127.007(a) or (b), the COTP issues a Letter of Recommendation (LOR) 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—

- (1) Information submitted under § 127.007;
- (2) Density and character of marine traffic in the waterway;
- (3) Locks, bridges, or other man-made obstructions in the waterway;
- (4) Following factors adjacent to the facility such as—
  - (i) Depths of the water;
  - (ii) Tidal range;
  - (iii) Protection from high seas;
  - (iv) Natural hazards, including reefs, rocks, and sandbars;
  - (v) Underwater pipelines and cables;
  - (vi) Distance of berthed vessel from the channel and the width of the channel; and
- (5) Any other issues affecting the safety and security of the waterway and considered relevant by the Captain of the Port.

(b) An LOR issued under this section is a recommendation from the COTP to the agency having jurisdiction as described in paragraph (a), and does not constitute agency action for the purposes of § 127.015 or the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

(c) The owner or operator, or a State, local, or Indian tribal government in the vicinity of the facility, may request reconsideration as set forth in § 127.010.

(d) Persons other than the owner or operator, or State, local, or Indian tribal government in the vicinity of the facility, may comment on the LOR by submitting comments and relevant information to the agency having jurisdiction, as described in paragraph (a), for that agency's consideration in its permitting process.

(e) Paragraphs (c) and (d) of this section apply to LORs issued after December 28, 2012. For LORs issued

prior to that date, persons requesting reconsideration must follow the process set forth in § 127.015.

■ 3. Add § 127.010 to read as follows:

#### § 127.010 Reconsideration of the Letter of Recommendation.

(a) A person requesting reconsideration pursuant to § 127.009(c) must submit a written request to the Captain of the Port (COTP) who issued the Letter of Recommendation (LOR), and send a copy of the request to the agency to which the LOR was issued. The request must explain why the COTP should reconsider his or her recommendation.

(b) In response to a request described in paragraph (a) of this section, the COTP will do one of the following—

- (1) Send a written confirmation of the LOR to the agency to which the LOR was issued, with copies to the person making the request and the owner or operator; or
- (2) Revise the LOR, and send the revised LOR to the agency to which the original LOR was issued, with copies to the person making the request and the owner or operator.

(c) A person whose request for reconsideration results in a confirmation as described in paragraph (b)(1) of this section, and who is not satisfied with that outcome, may request, in writing, the opinion of the District Commander of the district in which the LOR was issued.

(1) The request must explain why the person believes the District Commander should instruct the COTP to reconsider his or her recommendation.

(2) A person making a request under paragraph (c) of this section must send a copy of the request to the agency to which the LOR was issued.

(3) In response to the request described in this paragraph (c), the District Commander will do one of the following—

- (i) Send a written confirmation of the LOR to the agency to which the LOR was issued, with copies to the person making the request, the owner or operator, and the COTP; or
- (ii) Instruct the COTP to reconsider the LOR, and send written notification of that instruction to the agency to which the original LOR was issued, with copies to the person making the request and the owner or operator.

(d) The District Commander's written confirmation described in paragraph (c)(3)(i) of this section ends the reconsideration process with respect to that specific request for reconsideration. If the COTP issues an LOR pursuant to paragraph (b)(2) or (c)(3)(ii) of this section, persons described in

§ 127.009(c) may request reconsideration of that revised LOR using the process beginning in paragraph (a) of this section.

Dated: November 14, 2012.

**J.G. Lantz,**

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

[FR Doc. 2012-28794 Filed 11-27-12; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2012-0945]

RIN 1625-AA00

#### Safety Zone; Bay Bridge Construction, San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay near Yerba Buena Island, CA in support of the Bay Bridge Construction Safety Zone from November 1, 2012 through July 31, 2013. This safety zone is being established to protect mariners transiting the area from the dangers associated with over-head construction operations. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective with actual notice from 12:01 a.m. on November 1, 2012 through November 28, 2012. This rule is effective in the **Federal Register** from November 28, 2012 until 11:59 p.m. on July 31, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG-2012-0945. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399-7442 or email at [D11-PF-MarineEvents@uscg.mil](mailto:D11-PF-MarineEvents@uscg.mil).

If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS Department of Homeland Security

FR **Federal Register**

NPRM Notice of Proposed Rulemaking

##### A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. The Coast Guard received notification of the load transfer operations on September 25, 2012 and the event would occur before the rulemaking process would be completed. Because of the dangers posed by over-head construction of the Bay Bridge, the safety zone is necessary to provide for the safety of mariners transiting the area.

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**. For the reasons stated above, delaying the effective date would be impracticable.

##### B. Basis and Purpose

The legal basis for the proposed temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C. 1221 et seq.).

CALTRANS will sponsor the Bay Bridge Construction Safety Zone on November 1, 2012 through July 31, 2013, in the navigable waters of the San Francisco Bay near Yerba Buena Island, CA. Construction is scheduled to take place from 12:01 a.m. on November 1, 2012 until 11:59 p.m. on July 31, 2013. Upon commencement of the over-head

construction for the Self-Anchored Suspension Span, the safety zone will encompass the navigable waters of the San Francisco Bay within a box connected by the following points: 37°49'06" N, 122°21'17" W; 37°49'01" N, 122°21'12" W; 37°48'48" N, 122°21'35" W; 37°48'53" N, 122°21'40" W (NAD 83). The construction is necessary to facilitate the completion of the Bay Bridge project. The Bay Bridge is constructed using a self-anchoring suspension system that requires frequent installation and removal of false work on and around the bridge. A safety zone is needed to establish a temporary limited access area on the waters surrounding the load transfer operation. A safety zone is necessary to protect mariners transiting the area from the dangers associated with the construction of the Bay Bridge Self-Anchoring Suspension Span.

##### C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone in navigable waters around and under the Bay Bridge within a box connected by the following points: 37°49'06" N, 122°21'17" W; 37°49'01" N, 122°21'12" W; 37°48'48" N, 122°21'35" W; 37°48'53" N, 122°21'40" W (NAD 83) during construction operations. Construction on the Self-Anchoring Suspension Span is scheduled to take place from 12:01 a.m. on November 1, 2012 until 11:59 p.m. on July 31, 2013. At the conclusion of the construction operations the safety zone shall terminate. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the construction operations. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area.

##### D. 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 and executive orders.

###### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of