

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165****[CGD05–03–023]****RIN 1625–AA00****Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, MD****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

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

DATES: This rule is effective January 29, 2004.

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

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

SUPPLEMENTARY INFORMATION:**Regulatory Information**

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

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

Background and Purpose

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

The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks [67 FR 58317 (September 13, 2002) Continuing national emergency with respect to terrorist attacks], [67 FR 59447 (September 20, 2002) Continuing national emergency with respect to persons who commit, threaten to commit or support terrorism]. The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks [E.O. 13273, 67 FR 56215 (September 3, 2002) Security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations]. As such, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to section 104 of the Maritime Transportation Security Act (MTSA) of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Comments

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

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

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

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