

Dated: December 15, 2003.

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-03-204]

RIN 1625-AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

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

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

Background and Purpose

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

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon building in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33

U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) ("Magnuson Act"), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Rule

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

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

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This regulation is of limited size, and vessels may transit around the zone.

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