



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: Notice of proposed rulemaking.

SUMMARY: This proposed rule would clarify 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 proposes a separate process for reconsideration of LORs by the Coast Guard. The proposed process, if finalized, would apply only to LORs issued after the effective date of the rule.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2011-0227 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ken Smith (CG-5222), U.S. Coast Guard; telephone 202-372-1413, e-mail Ken.A.Smith@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

- I. Public Participation and Request for Comments
 - A. Submitting comments
 - B. Viewing comments and documents
 - C. Privacy Act
 - D. Public meeting
- II. Abbreviations
- III. Background
- IV. Discussion of Proposed Rule
 - A. Proposed revisions to § 127.009
 - B. Proposed addition of § 127.010
- V. Regulatory Analyses
 - A. Regulatory Planning and Review
 - B. Small Entities
 - C. Assistance for Small Entities
 - D. Collection of Information
 - E. Federalism
 - F. Unfunded Mandates Reform Act
 - G. Taking of Private Property
 - H. Civil Justice Reform
 - I. Protection of Children
 - J. Indian Tribal Governments
 - K. Energy Effects
 - L. Technical Standards
 - M. Environment

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0227), indicate the

specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, and type "USCG-2011-0227" in the "Keyword" box. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Enter Keyword or ID" box insert "USCG-2011-0227" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may

view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

D. Public meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, it will hold one at a time and place announced by a later notice in the Federal Register.

II. Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
LHG	Liquefied hazardous gas
LNG	Liquefied natural gas
LOR	Letter of Recommendation
PWSA	Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221 et seq.)
§	Section symbol
U.S.C.	United States Code

III. Background

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 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 to the Captain of the Port (COTP) of the zone in which the facility is or will be located. The COTP then issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic related to the 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 increase in maritime 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, but the Coast Guard changed that process in a rule updating the letter of intent and LOR regulations (75 FR 29420, Revision of LNG and LHG Waterfront Facility General Requirements). 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.

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 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 (5 U.S.C. 551 *et seq.*). While we believe LORs should be subject to intra-agency review, we did not intend to suggest that an LOR is an agency action or that it conveys a right or obligation.

The LOR is not an agency action as that term is defined by the Administrative Procedure Act or understood in the context of enforceable legal actions. To constitute agency action for purposes of the Administrative Procedure Act, 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.

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. The Coast Guard COTP also may issue a COTP Order directing vessel operations, and although such an Order would be directed to the vessel's owner or operator, it could impact the operation of an LNG or LHG facility. Enforcement of these Coast Guard regulations constitutes agency action, follows administrative processes set out in Coast Guard regulations, and may be appealed in court at the completion of the administrative processes. For example, a Coast Guard action enforcing § 127.013, "Suspension of transfer operations," may be appealed under § 127.015, and a COTP Order directing vessel operations under 33 CFR 160.111 may be appealed under 33 CFR 160.7. An LOR is unrelated to the enforcement described above. It is not a precursor to or a basis for COTP Orders or Part 127 enforcement. The LOR is only a recommendation providing the jurisdictional agency with the benefit of the Coast Guard's expertise on waterway safety and security; it documents the COTP's recommendation

within another agency's permitting or approval process. The authority to approve or disapprove the siting, construction, or modification of an LNG or LHG facility lies with the jurisdictional agency, and not with the Coast Guard.¹

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, 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 process. The LOR is intended to inform the jurisdictional agency's

¹ Similarly, the LOR may inform the analysis undertaken by the jurisdictional agency pursuant to the National Environmental Policy Act (NEPA), but issuing the LOR is not a major Federal action under NEPA because it is not the adoption of an official policy, formal plan, or program or the approval of a specific project. (See 40 CFR 1508.18.)

process, and therefore should be available 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.

The purpose of the LOR is to assist the agencies having jurisdiction over the siting, construction, and operation of LNG and LHG facilities. The Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221 *et seq.*) (PWSA) authorizes the Secretary of the Department in which the Coast Guard is operating to implement regulations to, among other things, reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment. See 33 U.S.C. 1231. The Secretary of Homeland Security delegated this authority to the Coast Guard (Department of Homeland Security Delegation 0170.1). Issuing LORs with regard to proposed new or modified LNG or LHG facilities is one of many methods by which the Coast Guard furthers its missions under the PWSA. To improve the existing process, we propose to clarify the purpose of LORs and revise procedures by which facility owners or operators and State or local governments in the vicinity of a facility may request reconsideration of an issued LOR. The proposed reconsideration procedures, if finalized, would

apply only to LORs issued after the effective date of the rule.

IV. Discussion of Proposed Rule

We considered eliminating reconsideration of the LOR in order to avoid the confusion described above and eliminate procedural delay. We believe, however, that consistency and governmental transparency are best served if a defined set of stakeholders has the ability to ask the Coast Guard to reconsider its recommendation. This is in keeping with past and current process under § 127.015, in which the Coast Guard has responded to requests for reconsideration from facility owners and operators, and State or local governments, as the practical analogue to "persons directly affected."

As discussed above, the existing process for reconsideration can create confusion and delay. We therefore propose to add a new § 127.010 to 33 CFR part 127 to provide a separate process for the reconsideration of LORs issued after the effective date of this rule. To facilitate the use of this new section, we also propose to revise § 127.009 to clarify the scope of the LOR and the persons who may request reconsideration.

A. Proposed revisions to § 127.009

We propose to renumber the existing text of § 127.009, such that all of the existing text would be contained in paragraph (a). We propose to then add a paragraph to § 127.009 explaining that an LOR is only a recommendation from the COTP to the jurisdictional agency, and does not constitute agency action for the purposes of § 127.015 or the Administrative Procedure Act.

We also propose to indicate in this section that reconsideration of LORs would follow the process set forth in proposed § 127.010. To avoid disrupting any reconsiderations now in progress, and to prevent any perceived disadvantage to those who were issued an LOR indicating that reconsideration under § 127.015 was available, the Coast Guard would continue to process the reconsiderations of issued LORs under § 127.015. Only LORs issued after the effective date of any resulting final rule would follow the new process set out in proposed § 127.010. Processing issued LORs under § 127.015, however, does not alter the fact that all LORs are mere recommendations to the jurisdictional agency, and none are agency actions as outlined in the Administrative Procedure Act.

As set forth in the proposed revision to § 127.009, the facility owner or operator could request reconsideration of the LOR, as could a State or local

government in the vicinity of the facility. Other interested persons would submit comments and relevant information to the jurisdictional agency for that agency's consideration during its permitting process. This is consistent both with the Coast Guard's submission of its own recommendation to the jurisdictional agency for that agency's consideration, and with the Coast Guard's past and current practice of receiving requests for reconsideration from a limited set of persons under § 127.015.

In general, those interested in expressing their agreement or disagreement with the Coast Guard's recommendation would submit their own comments and information to the jurisdictional agency, so that the agency can weigh all the information before it makes a decision. We believe, however, that it is important to provide for additional discussion with the facility owner or operator and the State or local governments in the vicinity of the facility. These entities possess unique information regarding safety and security issues affecting the facility and waterway. The facility owner or operator often is aware of, or even the source of, anticipated changes in vessel traffic, navigation obstructions, and other factors the Coast Guard considers in issuing the LOR. State and local governments play an important role in

protecting public safety, and are essential in helping the Federal government plan and prepare for emergencies; they also may be aware of safety and security resources and challenges. Therefore, the proposed rule would provide an avenue for these entities to request that the Coast Guard reconsider its LOR. We invite the public to comment on the scope of this exception, and specifically on whether it should be extended in the final rule to additional categories of persons. If you provide comments on this topic, please explain the reasons for your comments.

In addition to the above changes related to new § 127.010, we propose revising § 127.009(a)(5), the last item in the list of considerations the COTP takes into account when developing the LOR. The proposed revision is more specific than the current phrase, "[o]ther safety and security issues identified," and more accurately reflects the COTP's ability to consider a broad range of safety and security issues that may vary from waterway to waterway.

B. Proposed addition of § 127.010

As proposed in this new section, the reconsideration of an LOR would begin with the submission of a written request to the COTP who issued the LOR, describing why the COTP should reconsider his or her recommendation. The explanation would focus on the waterway safety and security

topics set forth in §§ 127.007 and 127.009, as these describe the limited scope of the LOR. The person requesting reconsideration would send a copy of the request to the agency to which the LOR was issued, to inform the agency with jurisdiction for siting, construction, or operation of the facility that the COTP has been asked to reconsider the LOR.

The COTP would review the request and the LOR, and either confirm or revise the recommendation. The COTP would send either a written confirmation or a revised LOR to the jurisdictional agency, with copies to the requester and to the facility owner or operator. This would ensure that all those who received the original LOR, and the copy of the request for reconsideration, also receive the written confirmation or revised LOR. A facility owner or operator, or State or local government in the vicinity of the facility, who wished to request reconsideration of the revised LOR, could do so by following the same procedures for requesting reconsideration of the original LOR.

Documents the Coast Guard provides to jurisdictional agencies concerning LOR requests for reconsideration and appeals are normally made available to the public through the jurisdictional agency's docket management system.

If the COTP confirms the recommendation after reconsideration, the person who requested reconsideration could seek the opinion of the COTP's District Commander. The request would have to explain why the District Commander should review the COTP's recommendation, and the requester must also send a copy to the jurisdictional agency to which the LOR was issued.

The District Commander would review the LOR and associated documents, and either confirm the LOR or instruct the COTP to reconsider the LOR. As in the earlier stage, the District Commander would send a written notification to the jurisdictional agency, with copies to the requester and the facility owner or operator. The District Commander's written confirmation would end the reconsideration process; the requester could not request review by another officer in the chain of command. We propose to limit reconsideration to the District Commander level because the COTP and the District Commander have the most expertise with the specific local waterway.

If the District Commander instructed the COTP to reconsider the LOR, and that reconsideration resulted in a revised LOR, then a facility owner or operator, or State or local government in the vicinity of the facility, could request reconsideration of the revised LOR by following the

same procedures for requesting the reconsideration of the original LOR.

The proposed rule could result in more than one person requesting reconsideration of an LOR, such that multiple reconsiderations would be "in progress" at one time. The Coast Guard would consolidate multiple requests when appropriate.

We do not propose a specific timeline for submitting or processing requests, but in general we would expect to receive requests for reconsideration, if any, soon after issuing the LOR, and we would expect to resolve them as promptly as possible. The Coast Guard would not expect to continue to reconsider an LOR after the jurisdictional agency has reached its decision, even if the process described above has not run its course. As stated above, the LOR is intended to inform the jurisdictional agency's decision, and a reconsideration resulting in revisions to the LOR after the jurisdictional agency's decision would not serve the purpose of the LOR. We strongly recommend that any requests for reconsideration be submitted as soon as possible after the LOR is issued, to allow adequate time for Coast Guard reconsideration and for the jurisdictional agency's consideration of any revised LOR.

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of 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 NPRM has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB). A draft regulatory assessment follows:

This proposed rule would clarify 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 would also provide a separate process for LOR

reconsideration for facility owners or operators and State or local government in the vicinity of the facility. If an LNG/LHG owner or operator or State or local 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 proposed process, if finalized, would apply only to LORs issued after the effective date of the rule.

We do not expect this proposed rule to impose new regulatory costs on the LNG/LHG industry because an LNG/LHG facility owner or operator and State or local 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 proposed rule would replace the existing process for reconsideration with the process in proposed § 127.010, and would apply to new LORs issued after the effective date of the rule, not LORs already issued. As such, no change in either the frequency of request or burden 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 proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Large corporations own the 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 frequency of request or burden as a result of this rulemaking.

Therefore, we certify under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity, and

that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that the entities can better evaluate its effects on them and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult with the Coast Guard personnel listed in the FOR FURTHER INFORMATION CONTACT section of this proposed rule. We 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) (PRA). Under OMB regulations implementing the PRA, "Controlling Paperwork Burdens on the Public" (5 CFR 1320), collection of information means the obtaining, soliciting, or requiring the disclosure to an agency of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons. "Ten or more persons" refers to the number of respondents to whom a collection of information is addressed by the agency within any 12-month period and does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government. Collections of information affecting ten or more respondents within any 12-month period require OMB review and approval.

This proposed rule articulates a separate process for reconsideration of LORs by the Coast Guard. As stated in Section V.A, there has been an average of about three requests for reconsideration annually since 2007, and the Coast Guard does not have any data to indicate the receipt of new requests for reconsideration of LORs within the foreseeable future. We therefore expect to receive fewer than ten requests per year. This figure is less than the threshold of ten respondents per 12-month period for collection of information reporting purposes under the PRA.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the

docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule involves creating a separate process for reconsideration of LORs and falls under section 2.B.2, figure 2-1, paragraph (34) (a) of the Instruction, which includes regulations which are editorial or procedural, such as those updating addresses or establishing application procedures. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 127

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

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

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

1. 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 or local 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 or local 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 (EFFECTIVE DATE OF FINAL RULE). 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-

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(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 COTP should 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 paragraph (c) of this section, 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: Dec 9, 2011

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