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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD07-05-138]

RIN 1625-AA11

Regulated Navigation Area: Savannah River, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: On January 19, 2007, the Coast Guard published an interim rule with request for comments, which revised the regulated navigation area in Savannah, Georgia, to address changes in Liquefied Natural Gas (LNG) tankship mooring locations following the creation of two new berths within a slip at the Southern LNG facility on the Savannah River. The final rule only addressed facility and vessel requirements when an LNG vessel was underway or moored parallel to the navigational channel outside of the slip. The interim rule was necessary to describe requirements for three different potential mooring situations following the LNG facilities expansion. This final rule adopts the interim rule requirements without change for the following mooring situations at the LNG facility: An LNG tankship moored outside of the slip, one or more LNG tankships moored inside the slip, and LNG tankships moored both inside and outside of the slip.

DATES: Effective October 10, 2007 the interim rule amending 33 CFR part 165 which was published at 72 FR 2448 on January 19, 2007, is adopted as a final rule.

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 [CGD07-05-138], and are

available for inspection or copying at Marine Safety Unit Savannah, Gordon Low Federal Building, Suite 1017, 100 W. Oglethorpe, Savannah, Georgia 31401, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Robert Webb, Waterways Management Officer, Marine Safety Unit Savannah; (912) 652-4353.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 19, 2007, the Coast Guard published an interim rule with request for comments entitled "Regulated Navigation Area: Savannah River, Savannah, GA" in the **Federal Register** (72 FR 2448). The Coast Guard received two letters commenting on the interim rule. No public meeting was requested, and none was held.

Background and Purpose

In May 2002, Southern LNG Inc., submitted a letter of intent to expand the LNG facility on Elba Island that would nearly double LNG storage capacity and substantially increase the number of LNG tankship arrivals. The Coast Guard's positive endorsement was contingent upon the relocation of the primary LNG mooring facility in order to reduce the risk of allision and subsequent breaching of an LNG tankship's cargo tank(s). To meet this Coast Guard requirement, Southern LNG Inc., initiated a project to create a protected docking slip designed to allow simultaneous LNG transfers from vessels. This expansion, completed early in 2006, significantly reduced the level of risk associated with LNG tankship operations and vessels passing by the LNG facility. This rule addresses the three possible tankship mooring configurations now available to LNG tankships. The three possible tankship mooring configurations available to LNG tankships are LNG vessels moored—

- Inside the slip,
- Outside the slip, or a
- Combination of inside and outside the slip.

Discussion of Comments and Changes

The Coast Guard received four comments from two commenters during the interim rule comment period (72 FR 2448). One commenter requested consideration as a small entity and a

"variation in the 2nm/70 yard restriction". It appears that the commenter's vessel may meet the definition of a small entity; however, the Coast Guard does not believe the rule will cause significant economic impact to the commenter.

The requirement to maintain a 2 nautical mile distance from LNG tankships, carrying LNG in excess of heel, only applies to vessels 1,600 gross tons and larger. The commenter's vessel is well under 1,600 gross tons and would only have to meet the requirements outlined in paragraphs (d)(1)(ii) and (d)(6)(vi) of the rule. Paragraph (d)(1)(ii) states that all vessels less than 1,600 gross tons shall keep clear of transiting LNG tankships and paragraph (d)(6)(vi) prohibits vessels less than 1,600 gross tons from approaching within 70 yards (210 feet) of a LNG tankship, carrying LNG in excess of heel, without the permission of the Captain of the Port. The width of the navigable channel where the commenter's vessel is expected to encounter a LNG tankship, and is directed to keep clear, is no less than 500 feet (166.7 yards). The Coast Guard believes the width of the channel provides an adequate distance for vessels under 1,600 gross tons to keep clear of a LNG tankship and therefore would not delay the commenter's vessel or cause significant economic impact.

Also, the requirement for vessels under 1,600 gross tons not to approach within 70 yards of a LNG tankship, carrying LNG in excess of heel, without permission of the COTP is applicable when approaching a moored LNG tankship. The route of the commenter's vessel does not typically include passing the LNG facility and therefore it is not likely that they will encounter a situation where they would approach a moored LNG tankship. The width of the navigation channel at the LNG facility is no less than 500 feet therefore, if a circumstance arose where the commenter's vessel did have to pass the LNG facility, the width of the channel would provide more than enough distance for the commenter's vessel to maintain the minimum 70 yard requirement. The Coast Guard does not believe this rule will cause the commenter significant economic impact because it is not likely the commenter's vessel will encounter a situation where they pass the LNG facility and the

channel is wide enough to maintain the 70 yard requirement without impacting the commenter's vessel.

The second commenter submitted several comments. The commenter stated that it was their belief that the docking pilots would better serve the LNG vessel and facility if stationed on the escort tugs after berthing the LNG vessel in the slip. After careful review and consultation with local docking management, the requirement for a bridge watch consisting of a docking pilot or licensed deck officer on board the moored LNG vessel remains. The Coast Guard believes that the docking pilot's reaction time and situational awareness to an emergency situation on the LNG tankship will be greater if he or she remains on board the LNG tankship.

The second commenter also stated they believe the docking pilots would be better off assisting a vessel, transiting the RNA, which has developed an emergency situation requiring tug assistance. Following careful review of this comment, we believe the Federal Pilot or Savannah River Pilot piloting a passing vessel 1,600 gross tons or greater that has an emergency, is better equipped to coordinate tug assistance in the course of their actions to address the emergency and bring a stricken vessel under control than a docking pilot on board an assist tug.

The second commenter also stated that they believe the docking pilots will be in violation of Georgia Code Sections 52-6-45 and 52-6-54 if they are on board an LNG vessel ordered to get underway in the event of an emergency departure. After careful review, consultation, and in agreement with the Savannah River Pilots and local docking management, the Coast Guard does not believe Georgia Code Sections 52-6-45 and 52-6-54 are applicable nor that docking pilots will be in violation of these state codes by remaining on board a LNG tankship ordered to get underway in an emergency.

Georgia Code (O.C.G.A.) Section 52-6-45 (2006) is entitled "Vessels to be under direction and control of licensed pilots; exemptions; use of docking pilots." O.C.G.A. section 52-6-45(a) states "[E]xcept as otherwise provided in this Code section, every vessel shall be under the direction and control of a pilot licensed by this state when underway in the bays, rivers, harbors, and ports of this state and the approaches thereto." O.C.G.A. section 52-6-45(b) lists categories exempted of the requirements in section 52-6-45(a) one of which is "[V]essels in distress or jeopardy, except that such vessel shall take a state licensed pilot as soon as one

arrives at the vessel." Furthermore, paragraph (c) in § 52-6-45 states "[N]othing in this Code section shall be construed to prohibit a vessel from utilizing the services of a docking pilot in addition to the state licensed pilot required under this chapter during docking and undocking maneuvers with the assistance of one or more tugboats."

O.C.G.A. section 52-6-54 makes it unlawful for anyone to act as a pilot without a license or interfere or disturb a licensed pilot in the performance of their duties. Additionally, paragraph (c) of O.C.G.A. section 52-6-54 states "[N]otwithstanding any other provisions of this Code section, any person may assist a vessel in distress which has no pilot on board if such person delivers up the vessel to the first licensed pilot who comes on board and offers to conduct it."

The requirement for a docking pilot to remain on board a moored LNG ship at the facility is a necessary requirement needed to assist LNG ships in an emergency situation; emergency situations have occurred at the facility—as previously discussed in the Interim Rule with requests for comments (72 FR 2448). O.C.G.A. section 52-6-45 and O.C.G.A. section 52-6-54 allow for licensed pilots and docking pilots to operate on board a vessel in conjunction with one another. These Georgia Code sections also allow for anyone to assist a vessel in distress without a pilot on board as long as that person does not interfere with a licensed pilot that shows up on scene to assist the vessel. It is for these reasons above that the requirement for a bridge watch consisting of a docking pilot or licensed deck officer on board the moored LNG vessel remains.

This final rule adopts the requirements published in the interim rule (72 FR 2448) without change. The final rule is necessary to ensure the safety of LNG vessels, the facility, the waterway, and the public due to the three different mooring situations now possible following the LNG facilities expansion.

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.

Delays for inbound and outbound traffic due to LNG transits will be reduced through this rule and through pre-transit conferences between the

pilots and the Coast Guard Captain of the Port. Additional financial benefits of this rule are that LNG tankships transiting in heel will not be required to have two escort towing vessels and LNG tankships moored only inside the LNG facility slip will only be required to provide 2 standby towing vessels vice the current requirement of 3 towing vessels.

The requirement of having one of the escort towing vessels be FiFi Class 1 equipped does not impose an additional financial burden due to a FiFi Class 1 escort towing vessel is currently being utilized for this purpose.

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.

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 this proposal so that they could better evaluate its effects on them and participate in the rulemaking.

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). 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.

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).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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.

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 might disproportionately affect children.

Indian Tribal Governments

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

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Division 5100.0, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ Accordingly, the interim rule amending 33 CFR part 165 which was published at 72 FR 2448 on January 19,

2007, is adopted as a final rule without change.

Dated: August 14, 2007.

D.W. Kunkel,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E7–17631 Filed 9–7–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–116]

RIN 1625–AA00

Safety Zone; Winnetka Fireworks, Lake Michigan, Winnetka, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan, Winnetka, IL. This zone is intended to restrict vessels from a portion of Lake Michigan during the Winnetka September 15, 2007 fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 8:30 p.m. to 10:30 p.m. on September 15, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD09–04–116 and are available for inspection or copying at U.S. Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective fewer than 30 days after publication in the **Federal Register**. Delaying this rule would be