

Chief of Port Operations, U.S. Coast Guard Marine Safety Office San Diego, at (619) 683-6495.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On November 1, 2002, we published a notice of proposed rulemaking (NPRM) entitled Security Zones, Port of San Diego, CA in the **Federal Register** (67 FR 212). We received 1 letter commenting on the proposed rule. No public hearing was requested, and none was held.

On November 5, 2001, we issued a temporary rule under docket COTP San Diego 01-020 which was published in the **Federal Register** (67 FR 6648, Feb. 13, 2002) under temporary section 165.T11-030 of Title 33 of the Code of Federal Regulations (CFR). In that rulemaking, the Coast Guard established a rule creating 100-yard security zones around cruise ships that enter, are moored in, or depart from the Port of San Diego.

On June 21, 2002, a change in effective period for the temporary rule was issued, under docket COTP SD 02-013, and was published in the **Federal Register** (67 FR 41845, June 20, 2002) under the same previous temporary section 165.T11-030, which is set to expire at 11:59 p.m. on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exists. This final rule differs slightly from temporary section 165.T11-030 in one way. Although, while implicit in the temporary rule, the security zones proposed here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of a cruise ship.

Accordingly, this rulemaking makes permanent the temporary security zones established on November 5, 2001, under docket COTP San Diego 01-020, 33 CFR 165.T11-030 published in the **Federal Register** at 67 FR 6648 (February 13, 2002). That temporary rule's effective period was extended until December 21, 2002 by a notice in the **Federal Register** dated June 20, 2002 (67 FR 41845).

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** because the threat of maritime attacks is real as evidenced by the attack of a tanker vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215) that the security of

the U.S. is endangered by the 9/11/01 attacks and that such disturbances continue to endanger the international relations of the U.S.

See also *Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 Fed. Reg. 58317 (September 13, 2002); *Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 Fed. Reg. 59447 (September 20, 2002). Additionally a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. Controlled Vessels and other Maritime Interests*, detailing the current threat of attack, MARAD 02-07 (October 10, 2002). The current temporary rule is set to expire December 21, 2002, and any delay in the effective date of this final rule is impractical and contrary to the public interest.

##### Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. 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 Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 and section 104 of the Maritime Transportation Security Act of November 25, 2002 (50 U.S.C. 191 *et seq*) (Magnuson Act) and 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.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist

attack against a cruise ship would have on the public interest, the Coast Guard is establishing security zones around and under cruise ships entering, departing, or moored within the port of San Diego. These security zones will help the Coast Guard prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard believes the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

##### Discussion of Comments and Changes

We received one letter from the local port authority commenting on the definition of a cruise ship used in the notice of proposed rulemaking. The definition in the notice of proposed rulemaking defined "cruise ship" as a "passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; capable of making international voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked, disembarked, or at a port of call in the San Diego port".

The local port authority noted that this definition of "cruise ship" would include various commercial sport fishing vessels that homeport in San Diego. After consideration of the comment, the Coast Guard has changed the definition of a "cruise ship" from "over 100 feet in length" to "100 gross tons or more". This change will eliminate commercial sport fishing vessels from the definition of "cruise ship".

##### 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area. Also, the zones will encompass only a small portion of the waterway. The Port of San Diego can accommodate only a few cruise ships moored at the same time. Most cruise ship calls at