

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05-03-008], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, U.S. Coast Guard Activities Baltimore at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

### Background and Purpose

In light of the terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon in Arlington, VA on September 11, 2001, safety and security zones are being established to safeguard certain types of vessels and the public from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels, and others in the maritime community from the hazards associated with the transit and limited maneuverability of these vessels. These safety and security zones prohibit entry into or movement within the specified areas.

This rule proposes to establish safety and security zones around cruise ships and vessels carrying CDC, LNG, or LHG while underway, anchored, or moored in the waters of the Chesapeake Bay and its tributaries. This rule creates safety and security zones within navigable waters of the United States in the COTP Baltimore zone, as defined in 33 CFR 3.25-15. While the COTP anticipates some impact on vessel traffic due to this regulation, these safety and security zones are deemed necessary for the protection of life, property, and the safety and security of navigation within the COTP Baltimore zone.

### Discussion of Proposed Rule

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures in 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 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 33 CFR 6.01 and 6.04.

In this particular rulemaking, to address the aforementioned security concerns and take steps to prevent the catastrophic impacts that a terrorist attack against cruise ships and vessels carrying CDC, LNG, or LHG would have on the public interest, the Coast Guard proposes establishing safety and security zones around and under these vessels while transiting, anchored, or moored within the COTP Baltimore zone. These safety and security zones will help the Coast Guard prevent other vessels or persons from engaging in terrorist actions against these vessels. The Coast Guard believes the establishment of safety and security zones is prudent for the following reasons:

(1) *Cruise Ships*. These are vessels of at least 100 gross tons defined as "passenger vessel" in 46 U.S.C. 2101 (22) that typically carry 500 or more passengers. The establishment of safety and security zones will increase the protection afforded these vessels.

(2) *Vessels Carrying CDC*. Under 33 CFR 160 these cargoes include division 1.1 and 1.2 explosives, permitted oxidizing material or blasting agents, highway route controlled or fissile radioactive material, poisonous gases, and other toxic or volatile materials. By the nature of these materials, an explosion or release of this type of cargo could have serious impact on the general public.

(3) *LHG and LNG Vessels*. LHG and LNG vessels carry highly toxic and/or flammable gases in large quantities as cargo. By the nature of these materials, a release of this type of cargo could have a serious impact on the general public.

The proposed safety and security zones surrounding each type of vessel will control the movement of persons and other vessels from the surface to the bottom in a 500 yard radius. All vessels and persons will be prohibited from entering the zone without permission from the COTP Baltimore or his or her designated representative. The COTP shall notify the general public by marine information broadcast of the activation of these zones. Federal, State, local, and private agencies may assist the Coast Guard in the enforcement of this rule.

### Regulatory Evaluation

This proposed 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. This finding is based on the limited size of the zones, the minimal time that vessels will be restricted from the zones, and vessels may transit around the zones. In addition, vessels that may need to enter the zones may request permission on a case by case basis from the COTP Baltimore or his designated representatives.

### 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit in a portion of the Chesapeake Bay and its tributaries near a vessel encompassed by the safety and security zones.