

interest since there is a continuing and immediate need to protect persons, vessels, and facilities in the various areas on the islands of Oahu, Maui, Hawaii, and Kauai, HI. Under these circumstances, following the normal rulemaking procedures would be impracticable.

Background and Purpose

Terrorist attacks in New York City, New York and on the Pentagon Building in Arlington, Virginia, on September 11, 2001, have called for the implementation of additional measures to protect national security. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This rule is similar to a temporary rule published October 30, 2002, creating security zones in these areas until April 19, 2003 (67 FR 66049).

Discussion of Comments and Changes

The Coast Guard received three comments following the publication of the notice of proposed rulemaking (NPRM) in the **Federal Register**. The first commenter raised four issues.

The first issue focused on the requirements for recreational, commercial fishing and commercial tourism vessels to request permission to transit the various security zones. The commenter indicated that the requirement is burdensome for vessel operators that are not required to carry a VHF-FM marine radio. These vessel operators are unable to contact the Captain of the Port via radio to request permission to transit a security zone and they are unable to hear the Broadcast Notices to Mariners announcing the status of the temporary zones. In the absence of a VHF-FM radio, the vessel operators may contact the Command Center via telephone, but a long distance call to the Command Center from the Outer Islands was considered to be unreasonable.

The Coast Guard understands that all vessels are not required to carry a VHF-FM marine radio. For those vessels, operators have the option to contact the Coast Guard via telephone either locally at 541-2477 or toll free at (800) 552-6458. While the Broadcast Notice to Mariners are only transmitted over the VHF-FM marine radio, if a vessel operator calls the Coast Guard on the telephone, they will be able to find out the status of the security zones and if necessary ask permission to enter the zone. Additionally, all Broadcast Notices to Mariners may be viewed on the U.S. Coast Guard Navigation Center Web site at www.navcen.uscg.gov/lnm/d14. Due to the various options

available to contact the Coast Guard, we do not believe it is an unreasonable burden to require the mariner to determine the status of the security zone before transiting the area. To provide additional options, the final rule includes the toll free number and also allows mariners to submit written requests by mail or fax.

The second issue concerns communications issues of recreational vessels complying with these regulations. The questions were raised as to how a recreational boater may obtain information about security zones, and what the penalties were for transiting a security zone without permission.

Current enforcement status information on security zones is reflected in the Broadcast Notice to Mariners, and on a website as stated in the response to comment number one. In addition, recreational boaters may contact the Command Center at VHF-FM channel 16, via the local telephone number 541-2477, or toll free at (800) 552-6458 for additional status information. Entering a security zone without the permission of the Captain of the Port is a violation of the Magnuson Act, 50 U.S.C. 191 and 33 CFR part 6. A violation of this section may result in a civil penalty of not more than \$25,000 for each violation or a criminal penalty resulting in imprisonment of not more than ten years and a fine not more than \$10,000. A reference to the penalty provision has been added to the final rule.

The third issue concerned possible impact on Small Entities. This comment was concerned that the small vessel operators lacking VHF-FM marine radios might be impeded in transiting security zones. Therefore, the commenter felt that this might constitute an economic impact on Small Entities.

The Coast Guard believes that the burden of requiring small vessels to contact the Captain of the Port prior to transiting the area is reasonable in relation to the security provided to the respective ports. All small vessel operators have had, and will continue to have, reasonable access to the navigable waters.

The fourth issue was a request that all the security zones be depicted on nautical charts. The commenter felt that this would improve awareness of and compliance with security zone regulations.

The Coast Guard has made arrangements for the zones to be published in both the Coast Pilot and on the applicable nautical charts once the proposed rule becomes final. The Coast

Guard looks forward to working with the local harbor safety committee to increase the public awareness of these zones through various methods in addition to publication in the Coast Pilot and updated nautical charts.

The second commenter requested that commercial Tugboat and Marine Transportation Companies who provide frequent and routine delivery of freight and fuel to the Hawaiian Islands be exempt from the requirement of asking permission to enter a port where a security zone is in place. Their concern is that the burden of asking permission would tie up phone lines, distract watch standers, and possibly delay deliveries of freight and fuel.

The Coast Guard believes that the requirement of asking permission to enter a security zone is the least restrictive means to maintain an adequate level of security and is not excessively burdensome to the commercial Tugboat and Marine Transportation Companies or to the Coast Guard to field these requests.

The third commenter stated that the distance between the furthest in-shore point of the security zone at the Tesoro and Chevron offshore moorings and the reef is too short to allow recreational traffic to safely pass.

The span of water between the furthest shoreward point of the security zone and the 3-fathom curve is approximately 200 yards. This span has an average depth of approximately 6 fathoms. The Coast Guard believes this span is adequate to allow safe passage of recreational traffic.

There are additional revisions to the final rule. The Authority list was amended to include more relevant federal statutes and to reflect the Coast Guard's transition from the Department of Transportation to the Department of Homeland Security. The definition for the term "voyage" was revised to provide a more accurate description of the term.

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).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies