

evolutions and provide adequate notice to the public, the Captain of the Port of San Diego proposes to establish a permanent security zone around the National City Marine Terminal which will be enforced when such a military onload evolution occurs.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended The Ports and Waterways Safety Act (PWSA) 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. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard proposes to establish a permanent security zone in the navigable waters of the United States adjacent to the National City Marine Terminal. The action proposed under this rule is necessary to protect the U.S. Naval vessel(s) and their crew(s) during these military outload evolutions at the National City Marine Terminal from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature.

Discussion of Proposed Rule

Due to National Security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for the U.S. Naval vessel(s), their crew(s), adjoining areas, and the public.

The military outload evolutions involve the transfer of military equipment from a shore side staging area to various Military Sealift Command vessels and other contracted vessels. The security zone will accompany other security measures implemented at the National City Marine Terminal waterfront facility.

Due to complex planning, national security reasons, and coordination with all military schedules, information regarding the precise location and date of the military outloads will not be circulated, however, prior to any outload evolution, the public will be notified that the security zone is in effect and will be enforced. The enforcement of the security zone will be announced via broadcast notice to mariners, local notice to mariners, or by any other means that is deemed appropriate.

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to he penalties set forth in 50 U.S.C. 192 which include seizure and forfeiture of the vessel, a monetary penalty of not more than \$12,500, and imprisonment for not more than 10 years.

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 Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because: (i) The zone will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessel(s), their crew(s), and the public. Accordingly, full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DHS is unnecessary.

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 rule will not have a significant economic impact on a substantial number of small entities.

Most of the traffic in this area is recreational traffic and sightseers. The economic impact is minimal by having them gain permission to transit through the zone from the COTP or his representative. The Coast Guard has coordinated with known private business owners in an effort to reduce any substantial impact on business.

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 (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule or if you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, U.S. Coast Guard Marine Office San Diego at (619) 683-6495.

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).

Collection of Information

This proposed rule would call 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 proposed rule under that Order and have determined that it does not have implications for federalism.