

### 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 [CGD09-03-241], 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 they 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, Ninth Coast Guard District (m) 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 later notice in the **Federal Register**.

### Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' abilities to utilize multiple means in different geographic areas thereby increasing their opportunities to maximize destruction.

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. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002). The President found that the security of the U.S. is endangered by the September 11, 2001 attacks and terrorist attacks continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency

With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD also issued Advisory 03-03 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert due to the Al Qaeda organization and other similar organizations who have declared their intentions to conduct armed attacks on U.S. interests worldwide.

Therefore, on April 16, 2003, the Coast Guard established a temporary RNA within the Illinois Waterway System within the Ninth Coast Guard District in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts. The temporary RNA remains in effect and applies to barges loaded with certain dangerous cargoes (CDCs) operating on the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. The RNA affects vessels transporting barges loaded with CDCs that if used as weapons of terrorism could result in substantial loss of life, property, environmental damage, and grave economic consequences. The temporary rule requires operators of barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the Inland River Vessel Movement Center (IRVMC) for the protection against sabotage and terrorist acts. The temporary final rule was published May 2, 2003, in the **Federal Register** (68 FR 23399) and expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on inland rivers and therefore we are proposing to issue an interim rule while we continue to consider alternatives to increase maritime domain awareness on the inland rivers in the Ninth Coast Guard District. The proposed rule would allow the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

### Discussion of Comments and Changes

The Ninth Coast Guard District did not receive any comments with regard to this rulemaking. However, since this rulemaking compliments a parallel rule published by the Eighth Coast Guard District on May 2, 2003 (68 FR 23393), those comments are addressed in this rulemaking as if received in response to our temporary final rule, request for comments.

As of July 9, 2003, the Eighth Coast Guard District received six written comments on the temporary rule. The American Waterways Operators requested a meeting with the Coast Guard regarding the rule. The meeting was held on May 8, 2003, at the Hale Boggs Federal Building in New Orleans, LA. All comments received focused generally on: (1) Changes and clarification of the definitions; (2) use of marine chemist certification; (3) location and amount of reporting points; (4) CDC barges in fleeting areas (5) need, use and validity of the information being collected; (6) availability of the information being collected from other sources; (7) use of technology such as electronic reporting; (8) cost and burden of the reporting requirements; (9) justification of the regulation; and (10) consistency with existing regulations. Each of these groups of comments is discussed in more detail in the following paragraphs.

**Definitions.** Several comments suggested some of the definitions lead to confusion and should be clarified or removed.

Three comments were received regarding the definition of "certain dangerous cargoes (CDCs)" and how they were determined. CDCs have specific characteristics that make them a higher risk compared to the other cargoes listed in 49 CFR parts 171 and 172. The list of cargoes includes cargoes that have not been traditionally carried on the river but which are not prohibited from carriage. One comment addressed the inconsistency between the CDC definition of ammonium nitrate as stated in the temporary rule and the CDC definition as stated in 33 CFR 160.204, published February 28, 2003 in *Notification of Arrival in U.S. Ports* (68 FR 9537, 9544). The CDC list published in 33 CFR 160.204 applies to packaged cargoes listed in 49 CFR chapter I, subchapter C. As such, ammonium nitrate in bulk is currently not considered a CDC. The Coast Guard proposes to use the same definition as set out in 33 CFR 160.204 with the addition of propylene oxide.

Three comments received stated that the definitions of "empty", "gas free"