

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*, (68 FR 53665, September 10, 2003); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (68 FR 55189, September 18, 2003). The references to these Presidential Documents as they appear in this interim final rule have updated those referenced in the NPRM (68 FR 44697). 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 inland rivers of the Eighth 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 Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0 including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio

River to mile zero on the Mobile River and all other tributaries between these two rivers. 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 final rule requires operators of barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the IRVMC for protection against sabotage and terrorist acts. The temporary final rule published May 2, 2003, (68 FR 23393) 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 issuing an interim rule while we continue to consider alternatives to increase maritime domain awareness on the inland rivers in the Eighth Coast Guard District. This rule allows 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 Coast Guard appreciates the excellent and professional involvement by the maritime community in the public rulemaking process, which has greatly helped the formulation of this rule to achieve the essential purposes while minimizing its impact.

As of September 15, 2003, we received one written comment on the NPRM. The comment focused generally on 4 concerns: (a) Reporting the planned route, (b) notifying the IRVMC 4 hours prior to originating a voyage within the RNA with one or more CDC barges, (c) notifying the IRVMC upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, and (d) reporting information as directed by the Coast Guard. Each section of this comment is discussed in more detail in the following six paragraphs.

Planned Route. The one comment we received stated that the requirement for submission of a planned route will increase the burden upon the mariner while providing no improvement on the information already required since point-to-point movements rarely allow for more than one route. We agree and have removed the requirement to report the planned route because the IRVMC will be receiving periodic updates on a CDC barge(s)'s location as the towing vessel operator checks in at designated

reporting points along the planned route. The requirement to submit a report with the name and location of the destination for each CDC barge and the estimated time of arrival remains unchanged.

Four hour advance notification. The one comment we received stated a concern regarding the requirement to report information 4 hours before originating a voyage within the RNA with one or more CDC barges. The comment indicates that fleeting area managers do not always have 4 hours advance notice of movement between receipt of an order and origination of the voyage. The comment suggested the requirement be amended to allow fleeting area managers to notify the IRVMC as soon as possible after the fleeting area manager receives a request to make up a tow or to deliver a CDC barge at a terminal. While we agree that in certain cases a fleeting area manager will not have sufficient time to make a 4-hour advance notification of movement to the IRVMC, this regulation does not require fleeting area managers to provide such notification. This regulation requires towing vessel operators to notify the IRVMC 4 hours before originating a voyage within the RNA with one or more CDC barges. However, we believe the conceptual basis of the comment applies to this requirement. For example, an operator of a towing vessel without any CDC barges operating in the RNA may receive an order to pick up a CDC barge. If the towing vessel is in close proximity to where the CDC barge is located, the evolution of making up the new tow with the CDC barge and originating the voyage may take less than 4 hours. According to the existing requirement in the NPRM, the towing vessel operator would then qualify as originating a voyage within the RNA with one or more CDC barges and as such would be required to provide the IRVMC with a notice 4 hours before originating the voyage. The Coast Guard understands that delaying the voyage to comply with the 4-hour advance notification requirement could negatively affect commercial operations. To alleviate this potential problem, we are adding an exception to the existing requirement. This exception will permit the towing vessel operator to make the required report to the IRVMC as soon as possible before originating a voyage in the RNA with one or more CDC barges. This exception is valid only if the following conditions exist:

(a) The evolution of making up a tow with a CDC barge will take less than four hours before originating a voyage; and