

intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on 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 Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular proposed rulemaking, to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a High Interest Vessel (HIV) would have on the public interest, the Coast Guard is proposing to establish permanent security zones around and under HIVs entering, departing, moored or anchored within the San Francisco Bay and Delta ports. These security zones would help the Coast Guard prevent vessels or persons from engaging in terrorist actions against HIVs. Due to these heightened security concerns and the catastrophic impact a terrorist attack on an HIV would have on the crew and passengers on board and surrounding communities, security zones are prudent for these types of vessels.

On February 10, 2003, we issued a rule under docket COTP San Francisco Bay 03-002 and published this rule in the **Federal Register** (68 FR 9003, February 27, 2003) creating temporary section 165.T11-077 of Title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11-077, the Coast Guard established 100-yard moving and fixed security zones around all HIVs that are anchored, moored or underway within the San Francisco Bay and Delta ports.

Though temporary section 165.T11-077 expired at 11:59 p.m. P.s.t. on May 31, 2003, it was effectively and seamlessly extended by a change in effective period temporary rule that was issued on May 19, 2003. This change in the effective period of the temporary rule is found under docket COTP San Francisco Bay 03-002 and was published in the **Federal Register** (68

FR 32368, May 30, 2003), under the same previous temporary section 165.T11-077, and extended the rule to 11:59 p.m. P.d.t. on September 30, 2003. On September 11, 2003, a second change in effective period temporary rule was issued, under docket COTP San Francisco Bay 03-002 and was published (68 FR 55445, September 26, 2003), under the same previous temporary section 165.T11-077, further extending the rule to 11:59 p.m. P.s.t. on March 31, 2004. The Captain of the Port has determined there is a need for continued security regulations exists.

We propose to create permanent security zones in the same areas currently protected by temporary security zones under § 165.T11-077. Our proposed rule would amend § 165.1183, Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California (see 67 FR 79856, December 31, 2002), which contains permanent security zones for cruise ships and tank vessels. In this NPRM, the Coast Guard is proposing to amend § 165.1183 to include HIVs as protected vessels along with cruise ships and tank vessels. The Coast Guard will utilize the extended effective period of the § 165.T11-077 to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Francisco Bay.

Discussion of Proposed Rule

The Coast Guard proposes to establish moving and fixed security zones around all HIVs that are anchored, moored or underway within the San Francisco Bay and Delta ports. These security zones are activated when any HIV passes shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W & 37°46.5' N, 122°35.2' W, respectively) and remains in effect while the vessel is underway, anchored or moored within in the San Francisco Bay and Delta ports. When activated, this security zone would encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV in the San Francisco Bay and Delta ports.

This security zone is automatically deactivated when the HIV passes seaward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W & 37°46.5' N, 122°35.2' W, respectively) on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis

with authorization from the Captain of the Port.

These security zones are needed for national security reasons to protect HIVs, the public, transiting vessels, adjacent waterfront facilities and the ports from potential subversive acts, accidents or other events of a similar nature. Entry into these zones would be prohibited unless specifically authorized by the Captain of the Port or his designated representative.

Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, and imprisonment up to 10 years.

The Captain of the Port would enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed rule restricts access to the waters encompassed by the security zones, the effect of this proposed rule