

Background and Purpose

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. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing 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 the Golden Gate or San Francisco-Oakland Bay bridge would have on the public, the Coast Guard is proposing to establish fixed security zones extending 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings. These security zones would help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these two bridges. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on one of these bridges would have on the public, the transportation system, and surrounding areas and communities, security zones are prudent for these structures.

On February 13, 2003, we issued a rule under docket COTP San Francisco Bay 03-003 and published that rule in the **Federal Register** (68 FR 13228, March 19, 2003) creating temporary § 165.T11-078 of Title 33 of the Code of Federal Regulations (CFR). Under

temporary § 165.T11-078, which expired at 11:59 p.m. PDT on September 30, 2003, the Coast Guard established 25-yard fixed security zones around all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California.

On September 8, 2003, a change in effective period temporary rule was issued, under docket COTP San Francisco Bay 03-003 and was published in the **Federal Register** (68 FR 55312, September 25, 2003), under the same previous temporary section 165.T11-078, extending the rule to 11:59 p.m. PST on March 31, 2004. The Captain of the Port has determined there is a need for continued security regulations.

We propose to create permanent security zones in the same areas currently protected by temporary security zones under § 165.T11-078. Our proposed rule would add § 165.1185, Security Zones; Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California. The Coast Guard will utilize the extended effective period of the § 165.T11-078 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 fixed security zones extending 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings of the Golden Gate and San Francisco-Oakland Bay bridges. In addition to restricting access to critical parts of bridge structures, these security zones would provide necessary standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel. This proposed rule, for security reasons, would prohibit entry of any vessel or person inside the security zone without specific authorization from 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 would not be significant because: (i) The zones would encompass only a small portion of the waterway; (ii) vessels would 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.

The size of the proposed zones is the minimum necessary to provide adequate protection for the bridges. The entities most likely to be affected are commercial vessels transiting the main ship channel en route to the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing.

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.