

effective period of the temporary rule was extended twice, first until September 30, 2002 (May 30, 2002 (67 FR 37682)), and then again through March 31, 2003 (August 28, 2002 (67 FR 55115)). The second extension allowed us to complete the rulemaking for permanent changes.

On June 19, 2002, we published a notice of proposed rulemaking in the **Federal Register** entitled "Notification of Arrival in U.S. Ports" (67 FR 41659). We received 21 comments addressing our proposal to permanently change the NOA requirements. No public hearing was requested and none was held.

### Background and Purpose

This rule permanently changes the NOA requirements in 33 CFR part 160. It replaces the temporary rule issued in response to the attacks on September 11, 2001, and contains most of the same NOA requirements that have been in place since October 4, 2001.

Currently, owners, agents, masters, operators, or persons in charge of vessels bound for U.S. ports must file an NOA before they enter port. (Persons required to submit reports will hereafter in this preamble be called "submitters.") In our notice of proposed rulemaking (NPRM) we proposed the following:

- Requiring additional information items in NOA reports;
- Requiring electronic submissions of cargo manifest information to the United States Customs Service (USCS);
- Requiring earlier submission times for NOAs;
- Revising requirements for reporting changes to submitted information;
- Merging the Notice of Departure (NOD) requirements with the NOA requirements;
- Allowing consolidated NOA reports for multiple port arrivals;
- Requiring centralized NOA submissions;
- Revising exemptions from NOA requirements; and
- Updating definitions.

Each of these issues is discussed in more detail in the remainder of the preamble.

### Discussion of Comments and Changes

We received 21 comments on the proposed rule. Generally, the comments recognized our need to increase the amount and type of information required in an NOA and the need for earlier submission of that information. Comments focused generally on:

- Format and readability of the regulation;
- Specific exemptions from NOA requirements;

- Suggestions for reporting requirements for "certain dangerous cargo;"
- Recommendations for a single submission of information to meet the needs of multiple agencies;
- Electronic submissions;
- Questions about the proposed requirement for submission of the cargo manifest to USCS;
- Requests for additional definitions in part 160; and
- Suggestions for changes to information required in an NOA.

Each of these groups of comments is discussed in more detail in the following paragraphs.

*Format of regulation.* A number of comments said the NPRM was difficult to read and understand. We agree. For ease of understanding, we have reformatted the requirements and renumbered the sections for this final rule. Many of the information requirements are also now provided in table format.

The current codification of part 160 contains both permanent and temporary sections, which are being changed by this rule. We are, therefore, republishing subpart C in its entirety for the public's convenience until the next CFR recodification.

*Exemptions.* We received nine comments related to exemption from NOA reporting. Six comments recommended exempting towing vessels that are in domestic service and not carrying CDC. We agree. This rule exempts towing vessels and barges not carrying CDC or controlling another vessel carrying CDC that are operating solely between ports or places in the continental U.S. from NOA reporting requirements.

One comment requested that Mobile Offshore Drilling Units (MODUs) moving between operating locations under U.S. jurisdiction be exempt from the NOA requirements. The comment suggested that the report required by 33 CFR 146.202, which notifies the Captain of the Port (COTP) 14 days before a MODU arrives or changes its location on the Outer Continental Shelf (OCS), should be used to meet the NOA requirements. The Coast Guard disagrees and has not exempted MODUs from the NOA requirements in this rule. The NOA information is different from that required by § 146.202. The MODU's arrival or change of location on the OCS does not require submission of an NOA, only the notification to the District Commander required by § 146.202. If a MODU is leaving the OCS to arrive at a U.S. port the MODU must comply with the NOA submission requirement in this rule.

One comment recommended exempting Aleutian Trade Act fish tenders. The comment explained that these fish tenders operate in the remote reaches of Alaska and their movements are unpredictable; it also explained that these fish tenders sail only between U.S. Ports, are U.S. owned, and that 98% of the crew are American citizens. The comment also stated that they do not carry bulk hazardous cargo. Because this issue is specific to Alaska, it can appropriately be addressed by the local COTP who, under § 160.214, may waive provisions of this subpart.

One comment recommended eliminating the exemption for passenger and supply vessels when they are employed in continental shelf resource exploration or extraction. The comment stated, "Logic would dictate that the offshore rigs could be used as a vehicle to aid in terrorism. Passenger and supply vessels often carry a myriad of hazardous materials including explosives." Two comments responded, disagreeing and urging Coast Guard to keep the exemption. The Coast Guard is not changing the exemption for these vessels.

One comment asked us to clarify who is required to report above or below mile 235 on the Mississippi River. Specifically, the comment asked if domestic barges not carrying CDC were required to report on this body of water.

We have revised the proposed regulatory text to more clearly state that all vessels are exempt when operating on the Mississippi River above mile 235, Above Head of Passes, including the tributaries and the Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway and the Red River, the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between those two. NOA requirements for vessels operating below mile 235 on the Mississippi River are the same as any other location in the U.S. covered by this rule.

*Certain Dangerous Cargo.* We received three (3) comments regarding the definition of Certain Dangerous Cargo (CDC). The comments state that the list of CDCs included in the requirement for NOA submission is too broad and that it impedes the collection of information on cargoes that pose the greatest risk to maritime safety and security. The comments suggest the Coast Guard limit the CDC definition to include only those cargoes that pose the greatest risk to maritime safety and security. They also recommend the Coast Guard use the list of high consequence cargoes in the AWO Security Plan (a list developed with