

**Unfunded Mandates Reform Act of 1995**

This action will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. (2 U.S.C. 1531 *et seq.*). This action makes a ministerial correction to the final rule that allows STDs to use a contracting method that has only been used in the Federal-aid highway program on an experimental basis to date.

**Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a Federal assessment. Nothing in this document directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

**Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the minor correction will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. The final rule does not address issues that are related to tribal operations. Therefore, a tribal summary impact statement is not required.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The final rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

**Executive Order 12630 (Taking of Private Property)**

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Executive Order 13211 (Energy Effects)**

We have analyzed this action under Executive Order 13211, Action Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has reviewed this rule and determined that it does not contain collection of information requirements for the purposes of the PRA.

**National Environmental Policy Act**

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and has determined that this rule will not have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this proposed action with the Unified Agenda.

**List of Subjects in 23 CFR Part 636**

Design-build, Grant programs-transportation, Highways and roads.

Issued on: February 13, 2003.

**James A. Rowland,**

*Chief Counsel, Federal Highway Administration.*

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 636, as follows:

**PART 636—DESIGN-BUILD CONTRACTING**

1. The authority citation for 23 CFR part 636 continues to read as follows:

**Authority:** Sec. 1307 of Pub. L. 105-178, 112 Stat. 107; 23 U.S.C. 110, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.48(b).

**§ 636.211 [Corrected]**

2. Correct paragraph (b)(2)(i) of § 636.211 to remove the word "less" and replace it with the word "more".

[FR Doc. 03-3987 Filed 2-18-03; 8:45 am]

BILLING CODE 4910-22-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 157 and 602**

[TD 9042]

RIN 1545-BB24

**Excise Tax Relating to Structured Settlement Factoring Transactions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the manner and method of reporting and paying the nondeductible 40-percent excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction. The Victims of Terrorism Tax Relief Act of 2001 added this excise tax to the Internal Revenue Code of 1986. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective February 19, 2003.

*Applicability Date:* For dates of applicability, see § 157.5891-1T(e).

**FOR FURTHER INFORMATION CONTACT:** Shareen S. Pflanz at 202-622-8488 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1824. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document adds a new part 157, Excise Tax on Structured Settlement Factoring Transactions, to title 26 of the Code of Federal Regulations. The temporary regulations under part 157 provide guidance on the proper manner and method of reporting and paying the 40-percent excise tax imposed on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction. The temporary regulations reflect the addition to the Internal Revenue Code (Code) of chapter 55 and section 5891 by section 115 of the Victims of Terrorism Tax Relief Act of 2001, Public Law 107-134 (115 Stat. 2427, 2436-2439).

### Explanation of Provisions

Section 5891 of the Internal Revenue Code imposes an excise tax on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction. The tax

is equal to 40 percent of the factoring discount with respect to the factoring transaction.

The temporary regulations set forth the manner and method of paying the excise tax imposed under section 5891 of the Code. Generally, the term *structured settlement factoring transaction* is defined as a transfer of structured settlement payment rights made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration. If a taxpayer is liable for the tax imposed by section 5891, the excise tax must be reported on Form 8876, Excise Tax on Structured Settlement Factoring Transactions. Generally, the temporary regulations require that the excise tax return be filed and the tax paid on or before the later of the ninetieth day following the day the taxpayer receives any structured settlement payment rights (including portions of structured settlement payments) or May 20, 2003. The temporary regulations provide rules relating to the Service's authority to extend the time for payment of any amount shown or required to be shown on the return.

The temporary regulations do not address the method of determining the proper amount of the excise tax imposed by section 5891 of the Code. Issues related to the determination of the amount of the excise tax may be addressed by future regulations.

The temporary regulations will be effective generally for structured settlement factoring transactions entered into on or after February 22, 2002.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

### Drafting Information

The principal author of these regulations is Shareen Soltanzadeh Pflanz, Attorney, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects

#### 26 CFR Part 157

Excise taxes, Structured settlement factoring transactions, Reporting and recordkeeping requirements.

#### 26 CFR Part 602

Reporting and recordkeeping requirements.

### Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is amended as follows:

#### SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

1. Part 157 is added to read as follows:

#### PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

##### Subpart A—Tax on Structured Settlement Factoring Transactions

Sec.

157.5891-1T Imposition of excise tax on structured settlement factoring transactions.

##### Subpart B—Procedure and Administration

- 157.6001-1T Records, statements, and special returns.
- 157.6011-1T General requirement of return, statement, or list.
- 157.6061-1T Signing of returns and other documents.
- 157.6065-1T Verification of returns.
- 157.6071-1T Time for filing returns.
- 157.6081-1T Extension of time for filing the return.
- 157.6091-1T Place for filing returns.
- 157.6151-1T Time and place for paying of tax shown on returns.
- 157.6161-1T Extension of time for paying tax.
- 157.6165-1T Bonds where time to pay tax has been extended.

**Authority:** 26 U.S.C. 7805.

Section 157.6001T also issued under 26 U.S.C. 6001.

Section 157.6011T also issued under 26 U.S.C. 6011.

Section 157.6061T also issued under 26 U.S.C. 6061.

Section 157.6071T also issued under 26 U.S.C. 6071.

Section 157.6091T also issued under 26 U.S.C. 6091.

Section 157.6161T also issued under 26 U.S.C. 6161.

## Subpart A—Tax on Structured Settlement Factoring Transactions

### § 157.5891–1T Imposition of excise tax on structured settlement factoring transactions.

(a) *In general.* Section 5891 imposes on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount with respect to such factoring transactions.

(b) *Exceptions for certain approved transactions*—(1) In general. The excise tax shall not apply to a structured settlement factoring transaction if the transfer of structured settlement payment rights is approved in advance in a qualified order.

(2) *Qualified order dispositive.* A qualified order shall be treated as dispositive for purposes of this exception.

(c) *Definitions*—(1) Applicable state statute means—(i) A statute that is enacted by the state in which the payee of the structured settlement is domiciled and that provides for the entry of an order, judgment, or decree described in paragraph (c)(4)(i) of this section; or

(ii) If there is no such statute, a statute that is enacted by the state in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business and that provides for the entry of such an order, judgment, or decree.

(2) Applicable state court means, with respect to any applicable state statute, a court of the state that enacted such statute. If the payee of the structured settlement is not domiciled in the state that enacted the statute, the term also includes a court of the state in which the payee is domiciled.

(3) Factoring discount means an amount equal to the excess of—

(i) The aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction; over

(ii) The total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(4) *Qualified order* means a final order, judgment, or decree that—

(i) Finds that the transfer of structured settlement payment rights does not contravene any federal or state statute, or the order of any court or responsible administrative authority, and is in the best interest of the payee, taking into

account the welfare and support of the payee's dependents; and

(ii) Is issued under the authority of an applicable state statute by an applicable state court, or is issued by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(5) *Responsible administrative authority* means the administrative authority that had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.

(6) *State* includes the Commonwealth of Puerto Rico and any possession of the United States.

(7) *Structured settlement* means an arrangement—

(i) That is established by—

(A) Suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2); or

(B) Agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1); and

(ii) Under which the periodic payments are—

(A) Of the character described in section 130(c)(2)(A) and (B); and

(B) Payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(8) *Structured settlement factoring transaction* means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration other than—

(i) The creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights; or

(ii) A subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(9) *Structured settlement payment rights* means rights to receive payments under a structured settlement.

(d) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general.* If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) *No withholding of tax.* The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(e) *Effective dates*—(1) *In general.* Section 5891 applies to structured settlement factoring transactions entered into on or after February 22, 2002. Section 5891(d) also applies to structured settlement factoring transactions entered into before February 22, 2002.

(2) *Transition rule.* In the case of a structured settlement factoring transaction entered into during the period beginning on February 22, 2002, and ending on July 1, 2002, no tax shall be imposed under section 5891(a) if—

(i) The structured settlement payee is domiciled in a state (or possession of the United States) that has not enacted an applicable state statute (as defined in section 5891(b)(3)); and

(ii) The person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction—

(A) The amounts and due dates of the payments to be transferred;

(B) The aggregate amount to be transferred;

(C) The consideration to be received by the structured settlement payee for the transferred payments;

(D) The discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520); and

(E) The expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

## Subpart B—Procedure and Administration

### § 157.6001–1T Records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 55 (Structured

Settlement Factoring Transactions) of the Internal Revenue Code (chapter 55) must keep such complete and detailed records as are sufficient to enable the Internal Revenue Service (IRS) to determine accurately the amount of liability under chapter 55. (b) Notice by the IRS requiring returns, statements, or the keeping of records. The IRS may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the IRS to determine whether or not the person is liable for tax under chapter 55.

(c) *Retention of records.* The records required by this section must be kept at all times available for inspection by the IRS, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

**§ 157.6011-1T General requirement of return, statement, or list.**

Every person liable for tax under section 5891 must file a return with respect to the tax in accordance with the forms and instructions provided by the Internal Revenue Service.

**§ 157.6061-1T Signing of returns and other documents.**

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code or the regulations thereunder must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

**§ 157.6065-1T Verification of returns.**

If a return, statement, or other document made under the provisions of chapter 55 of the Internal Revenue Code (chapter 55) or of subtitle F of the Code (subtitle F), or the regulations thereunder with respect to any tax imposed by chapter 55, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or

document submitted under any provision of chapter 55 or subtitle F, or the regulations thereunder, with respect to any tax imposed by chapter 55 may be required to contain or be verified by written declaration that is made under the penalties of perjury.

**§ 157.6071-1T Time for filing returns.**

(a) *In general.* Except as provided in paragraph (b) of this section, returns required by § 157.6011-1T (relating to returns of tax with respect to structured settlement factoring transactions) must be filed on or before the ninetieth day following the receipt of structured settlement payment rights in a structured settlement factoring transaction.

(b) *Returns relating to structured settlement payment rights received before February 19, 2003.* Returns required by § 157.6011-1T that relate to structured settlement payment rights received on or before February 19, 2003, must be filed on or before May 20, 2003.

**§ 157.6081-1T Extension of time for filing the return.**

(a) *Application for extension.* An application for an extension of time for filing the return required by § 157.6011-1T (relating to returns of tax with respect to structured settlement factoring transactions) must be completed in accordance with the forms and instructions provided by the Internal Revenue Service. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of the extension.

(b) *Filing of return.* If an extension of time for filing the return is granted, a return must be filed before the period of extension expires.

**§ 157.6091-1T Place for filing returns.**

The return required by § 157.6011-1T (relating to returns of tax with respect to structured settlement factoring transactions) must be filed at the place specified in the forms and instructions provided by the Internal Revenue Service.

**§ 157.6151-1T Time and place for paying of tax shown on returns.**

The tax under chapter 55 (Structured Settlement Factoring Transactions) of

the Internal Revenue Code shown on any return must, without assessment or notice and demand, be paid at the time and place specified in the forms and instructions provided by the IRS. For provisions relating to the time and place for filing such return, see § 157.6071-1T and § 157.6091-1T. For provisions relating to the extension of time for paying the tax, see § 157.6161-1T.

**§ 157.6161-1T Extension of time for paying tax.**

(a) *In general—(1) Tax shown or required to be shown on return.* The Internal Revenue Service may, at the request of the taxpayer, grant a reasonable extension of time for payment of the amount of any tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code (chapter 55) and shown or required to be shown on any return. The period of such extension shall not exceed 6 months from the date fixed for payment of such tax, except that in the case of a taxpayer that is abroad, such extension may exceed 6 months.

(2) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extension of time for paying income tax to apply.* The provisions of § 1.6161-1(b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 55 of the Internal Revenue Code.

**§ 157.6165-1T Bonds where time to pay tax has been extended.**

If an extension of time for payment is granted under section 6161, the Internal Revenue Service may, if it deems necessary, require a bond for the payment, in accordance with the terms of the extension, of the amount with respect to which the extension is granted. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to the form of bonds, see the regulations under section 7101 contained in part 301 (Regulations on Procedure and Administration) of this chapter.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

2. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

3. In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table as follows:

**§ 602.101 OMB control numbers.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section identified and described	Current OMB control No.
* * * * *	* * * * *
157.6001-1T .....	1545-1824
157.6011-1T .....	1545-1824
157.6081-1T .....	1545-1824
157.6161-1T .....	1545-1824
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**David Mader,**  
*Assistant Deputy Commissioner of Internal Revenue.*

Approved: December 17, 2002.

**Pamela F. Olson,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 03-3864 Filed 2-18-03; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[CGD01-03-010]

RIN 2115-AA97

**Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing temporary safety and security zones in portions of the waters around La Guardia and John F. Kennedy airports in Queens, NY, the New York City Police Department (NYPD) ammunition depot on Rodman Neck in Eastchester Bay, and the Port Newark and Port Elizabeth, NJ, commercial shipping facilities in Newark Bay. This action is necessary to safeguard critical port infrastructure and coastal facilities from sabotage, subversive acts, or other threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

**DATES:** This rule is effective from February 4, 2003 until September 1, 2003. Comments and related material must reach the Coast Guard on or before April 21, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01-03-010) and are available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354-4012.

**SUPPLEMENTARY INFORMATION:**

**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 (CGD01-03-010), 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 temporary 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 Activities New York Waterways Oversight Branch 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**.

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The Captain of the Port conducts an ongoing assessment of the maritime domain security needs within the port and has determined that the temporary safety and security zones established by this rule are necessary to provide for the protection of critical port infrastructure and coastal facilities. This determination was reached after due consideration of various warnings publicly disseminated by the Federal Bureau of Investigation and other law enforcement agencies, threatening

statements attributed to the al Qaeda organization, terrorist attacks upon civil aviation in Kenya, Africa, and requests received from the police departments of New York City and the Port Authority of New York and New Jersey. In view of the urgent need to adequately safeguard critical coastal facilities and infrastructure from potential terrorist attack, any delay encountered by normal notice and comment rulemaking procedures would be contrary to the public interest.

For the same reasons, the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

**Background and Purpose**

On September 11, 2001 three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. *See, 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 President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States*, 67 FR 56215 (September 3, 2002).

Since the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions within Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing