



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0692]

RIN 1625-AA00

Safety Zone: Suisun Bay Electromagnetic Scan and Ordnance Recovery, Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing temporary safety zones in the navigable waters of Suisun Bay in support of the Military Ocean Terminal Concord (MOTCO) electromagnetic scan and ordnance recovery operations. These safety zones are established to ensure the safety of the ordnance identification and recovery teams and mariners transiting the area. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port or their designated representative.

DATES: This rule will be enforced with actual notice from August 26, 2013 to [Insert date of publication ion the Federal Register]. This rule is effective in the Code of Federal Regulations from [Insert date of publication ion the Federal Register] through October 25, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0692. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399-3585 or e-mail at [D11-PF-MarineEvents@uscg.mil](mailto:D11-PF-MarineEvents@uscg.mil). If you have questions on viewing the docket, call Program Manager, Docket Operations, telephone (202)366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

|       |                                     |
|-------|-------------------------------------|
| DHS   | Department of Homeland Security     |
| DoD   | Department of Defense               |
| FR    | Federal Register                    |
| MMRP  | Military Munitions Response Program |
| MOTCO | Military Ocean Terminal Concord     |
| NPRM  | Notice of Proposed Rulemaking       |

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C.

553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because publishing an NPRM would be contrary to the public interest. The Military Munitions Response Program (MMRP) addresses the safety and environmental hazards presented by munitions and explosives. MOTCO recently completed an underwater geophysical survey of Suisun Bay whereby they identified 55 locations throughout Suisun Bay with ferrous-based objects that may contain ordnance deposited as a result of the Port Chicago explosion on July 17, 1944. MOTCO notified the Coast Guard on July 10, 2013 that they intend to conduct an intrusive electromagnetic scan and ordnance recovery operation in selected areas of Suisun Bay with a high probability of containing ordnance items, and the operation would occur before the rulemaking process would be completed. The safety zone is necessary to ensure the safety of the teams conducting ordnance scanning and recovery operations as well as provide for the safety of vessels transiting the area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good

cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the reasons stated above, delaying the effective date would be contrary to the public interest.

#### B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

MOTCO is sponsoring the Suisun Bay Electromagnetic Scan and Ordnance Recovery Safety Zone from August 26, 2103 through October 25, 2013 in the navigable waters of the Suisun Bay, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656. The safety zone establishes a 100 foot moving safety zone around a 2-barge configuration, flying a red flag, and traveling throughout Suisun Bay conducting electromagnetic scan and ordnance recovery operations. A temporary safety zone will also be established for emergency ordnance detonation between Roe Island and Ryer Island at the following location: 38° 04'24"N, 122° 01'14"W (NAD 83) for use only in the event that unstable ordnance items are recovered that require immediate detonation on site. Until such a time is needed, vessel traffic is free to move through the area. A broadcast will be released when the zone will be enforced, giving

vessel traffic enough time to leave the area. These safety zones are necessary to ensure the safety of teams conducting electromagnetic scans and ordnance recovery operations and to ensure the safety of mariners transiting the area. These safety zones will be enforced from August 26, 2013 to October 25, 2013 between the hours of 7 a.m. and 4 p.m. The safety zones shall terminate at the conclusion of the electromagnetic scan and ordnance recovery operations.

### C. Discussion of the Final Rule

The Coast Guard will enforce a 100 foot moving safety zone around a 2-barge configuration, flying a red flag, and traveling throughout Suisun Bay conducting electromagnetic scan and ordnance recovery operations from August 26, 2013 to October 25, 2013 between the hours of 7 a.m. and 4 p.m. To minimize impacts to commerce, the ordnance disposal team will cease operations to accommodate commercial vessels requiring transit through the navigation channel in vicinity to the project location.

Commercial vessels will be informed via broadcast and local notice to mariners to coordinate passing arrangements with the ordnance disposal team prior to transiting the project area.

A temporary safety zone will be established for emergency ordnance detonation between Roe Island and Ryer Island at the following location: 38° 04'24"N, 122° 01'14"W (NAD 83) for use only in the event that unstable ordnance items are recovered that require immediate detonation on site. Until such a time is

needed, vessel traffic is free to move through the area. A broadcast will be released when the zone will be enforced, giving vessel traffic enough time to leave the area. At the conclusion of the electromagnetic scan and ordnance recovery the safety zones shall terminate.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the electromagnetic scan and ordnance recovery operations. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The

safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons:

- (i) this rule will encompass only a small portion of the waterway

for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

## 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

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

9. Civil Justice Reform

This rule 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.

10. Protection of Children

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and

recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T11-588 to read as follows:

§165.T11-588 Safety zone; Suisun Bay Electromagnetic Scan and Ordnance Recovery, Suisun Bay, Concord, CA.

(a) Location. A temporary 100 foot moving safety zone will be established around a 2-barge configuration, flying a red flag, and traveling throughout Suisun Bay conducting electromagnetic scan and ordnance recovery operations as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656. Prior to vessels traveling through the navigational channel, notice will be given to the barges so that they have ample time to move out of the way and not impede traffic. An additional temporary safety zone will be established for emergency ordnance detonation between Roe Island and Ryer Island at the following location: 38° 04'24"N, 122° 01'14"W (NAD 83) for use only in the event that unstable ordnance items are recovered that require immediate detonation on site. Until such a time is needed, vessel traffic is free to move

through the area. A broadcast will be released when the zone will be enforced, giving vessel traffic enough time to leave the area.

(b) Enforcement Period. The zones described in paragraph (a) of this section will be in effect from August 26, 2013 through October 25, 2013 between the hours of 7 a.m. until 4 p.m. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) Definitions. As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) Regulations. (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to

enter the safety zone on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

Dated: August 23, 2013

Gregory G. Stump  
Captain, U.S. Coast Guard  
Captain of the Port San Francisco

[FR Doc. 2013-21939 Filed 09/09/2013 at 8:45 am; Publication Date: 09/10/2013]