



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0330]

RIN 1625-AA87

Security Zone; Military Ocean Terminal Concord (MOTCO);  
Concord, California

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard is proposing revisions to the existing conditional security zone regulation currently in place in the navigable waters of Suisun Bay, California, near Concord, California around each of the three piers at the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). This proposed action is intended to clarify responsibilities and authorities for enforcement of the security zone.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER

DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2015-0330. 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.

You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9

a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Marcia Medina, Sector San Francisco, U.S. Coast Guard; telephone (415) 399-7443, e-mail [D11-PF-MarineEvents@uscg.mil](mailto:D11-PF-MarineEvents@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
COTP	Captain of the Port San Francisco
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
MOTCO	Military Ocean Terminal Concord
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to

<http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this notice of proposed rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as 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 notice of proposed 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.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor

union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### 4. Public meeting

We do not plan to hold a public meeting due to the nature of the existing security zone and the limited impact to the public. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please submit your request by [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and explain why you believe a public meeting 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.

#### B. Regulatory History and Information

On August 27, 1996, the Department of the Army, Corps of Engineers published a final rule in the Federal Register (61 FR 43969) establishing a restricted area<sup>1</sup> around the MOTCO piers (33 CFR 334.1110). Although the restricted area prohibits public access to the piers at all times, it lacks a conditional boundary extension to be enforced

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<sup>1</sup> A "restricted area" is defined in § 334.2 as "[a] defined water area for the purpose of prohibiting or limiting public access to the area. Restricted areas generally provide security for Government property and/or protection to the public from the risks of damage or injury arising from the Government's use of that area."

during the presence of munitions laden vessels and/or military onload/offload activities. Prior to January 24, 2005, the Coast Guard would address this lack of a conditional boundary by publishing a temporary security zone of sufficient size in the area for each operation at MOTCO (see e.g., 68 FR 33382).

On January 24, 2005, to address this issue on a more permanent basis, the Coast Guard published a final rule in the Federal Register (70 FR 3299) establishing a conditional 500-yard security zone around MOTCO's piers to be enforced during military onload/offload operations (33 CFR 165.1199). The security zone provides necessary security for military operations by providing a standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel.

### C. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones. This authority is separate from the Department of the Army, Corps of Engineers authority to provide appropriate security in defense of their waterfront

facilities and for vessels moored thereto in accordance with the restricted area in 33 CFR 334.1110.

The purpose of this rulemaking is to advance the Coast Guard's efforts to thwart potential terrorist activity through security measures on U.S. ports and waterways.

#### D. Discussion of the Proposed Rule

The current regulation at § 165.1199 contains several items that are the subject of the revisions proposed in this NPRM. The proposed revisions to § 165.1199 would clarify the regulations in a concise, understandable format.

First, the Coast Guard proposes to revise § 165.1199(c) by clarifying the Coast Guard's enforcement role during active loading operations, and the ability of the COTP to designate other representatives as having authority to enforce the security zone. The Coast Guard proposes to replace the existing term "patrol personnel," in favor of a more appropriate term, "designated representative," which includes federal, state and local officials designated by the COTP. This revision would clarify that the COTP may designate law enforcement officials other than Coast Guard personnel to patrol and enforce the security zone.

The Coast Guard also proposes to revise the security

zone so that it is enforceable at any time a vessel loaded with munitions is present at a pier (in addition to during military onload/offload operations). Without this revision, the existing security zone is enforceable during military onload or offload operations only.

Additionally, the Coast Guard proposes to remove the existing provision regarding "Local Notice to Mariners" as a means of notifying the public that the security zone will be enforced. The security concern related to providing advance notification of the presence of an explosive load at a military base outweighs the benefit of advance notice of the security zone. Instead, the Coast Guard would notify the public of security zone enforcement (and suspensions of enforcement) via Broadcast Notice to Mariners and/or actual notice on-scene during military onloads or offloads. This revision would better align the notification method of this security zone with the notification method for the existing safety zone in the area (see §165.1198).

Finally, in addition to the above revisions, the Coast Guard proposes to make minor technical editorial adjustments to § 165.1199 for ease of reading and comprehension.

#### E. Regulatory Analyses

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

#### 1. Regulatory Planning and Review

This proposed 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Security zone enforcement would be limited in duration, and limited to a narrowly tailored geographic area. In addition, although this proposed rule would restrict access to the waters encompassed by the security zone, the effect of this proposed rule would not be significant because the local waterway users will be notified via Broadcast Notice to Mariners and/or actual notice on-scene during military onloads or offloads. 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 term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. The security zone would not have a significant economic impact on a substantial number of small entities for the following reasons. The security zone would be activated, and thus subject to patrol and enforcement, for a limited duration. When the security zone is activated, vessel traffic would be directed to pass safely around the security zone. The maritime public would be advised when transiting near the activated zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed rule would not call for a 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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule 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 proposed rule would not result in such an expenditure,

we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would 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 proposed 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 from Environmental Health Risks

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

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it would 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 proposed rule 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This proposed rule involves a security zone of limited size and duration. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary 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 proposed rule.

List of Subjects in

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.1199 to read as follows:

§165.1199 Security Zones; Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) Location. The security zone(s) reside(s) within the navigable waters of Suisun Bay, California, extending from the surface to the sea floor, within 500 yards of the three Military Ocean Terminal Concord (MOTCO) piers in Concord, California.

(b) Definitions. As used in this section, "designated representative" means any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the Captain of the Port San Francisco (COTP) to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a Federal, state, or local law enforcement vessel, or a location on shore.

(c) Regulations. (1) The security zone(s) described in paragraph (a) of this section will be in force during active military onloading and/or offloading operations and at any time a vessel loaded with munitions is present at a pier.

(2) When one or more piers are involved in onload or offload operations at the same time, there will be a 500-yard security zone for each involved pier.

(3) Under the general regulations in subpart D of this part, entry into, transiting or anchoring within the security zone(s) described in paragraph (a) of this section is prohibited during times of enforcement unless authorized by the COTP or a designated representative.

(4) Vessel operators desiring to enter or operate within the security zone(s) during times of enforcement must contact the COTP or a designated representative on VHF-16 or through the 24-hour Command Center at telephone (415) 399-3547 to obtain permission to do so. Vessel operators given permission to enter or operate in the security zone(s) must comply with all directions given to them by the COTP or a designated representative.

(5) Upon being hailed by the COTP or designated representative by siren, radio, flashing light, or other means, the operator of a vessel approaching the security zone(s) must proceed as directed to avoid entering the security zone(s).

(d) Notice of enforcement or suspension of enforcement of security zone(s). During periods that one or more security zones are enforced, the COTP or a designated representative will issue a Broadcast Notice to Mariners and/or notify mariners via actual notice on-scene. In addition, COTP maintains a telephone line that is

maintained 24 hours a day, 7 days a week. The public can contact COTP at (415) 399-3547 to obtain information concerning enforcement of this section. When the security zones are no longer needed, the COTP or designated representative will cease enforcement of the security zones. Upon suspension of enforcement, all persons and vessels are granted general permissions to enter, move within, and exit the security zones, but should remain cognizant of the applicable restricted area designated in 33 CFR 334.1110.

Dated: July 1, 2015.

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

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