



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:** Final rule.

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**SUMMARY:** The Coast Guard is revising 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 action is intended to clarify responsibilities and authorities for enforcement of the security zone.

**DATES:** This rule is effective from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0330 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this 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.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port San Francisco
DHS	Department of Homeland Security
E.O.	Executive Order
FR	<u>Federal Register</u>
MOTCO	Military Ocean Terminal Concord
NPRM	Notice of Proposed Rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

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 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

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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 that generally provides 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.

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.

On July 1, 2015, the Coast Guard published a NPRM (80 FR 48787), with proposed changes to clarify responsibilities and authorities for enforcement of the security zone. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended on September 14, 2015, we received 0 comments.

### **III. Legal Authority and Need for Rule**

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.

### **IV. Discussion of Comments, Changes, and the Rule**

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

First, the Coast Guard revises §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 clarifies that the COTP may designate law enforcement officials other than Coast Guard personnel to patrol and enforce the security zone.

The Coast Guard also revises 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).

No changes in the regulatory text of the rule in the NPRM.

## **V. Regulatory Analyses**

We developed this 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.

### **A. Regulatory Planning and Review**

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

Security zone enforcement would be limited in duration, and limited to a narrowly tailored geographic area. In addition, although this rule would restrict access to the waters encompassed by the security zone, the effect of this 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.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 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 received 0 comments from the Small Business Administration on this 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 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.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 section.

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.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 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 rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. 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.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined 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 rule involves a security 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.

#### G. 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.

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 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; 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: May 20, 2016.

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

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