

Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, encompassing the navigable waters, extending from the surface to the sea floor, bounded by the following coordinates: latitude 38°03'07"N and longitude 122°03'00"W; thence to latitude 38°03'15"N and longitude 122°03'04"W; thence to latitude 38°03'30"N and longitude 122°02'35"W; thence to latitude 38°03'50"N and longitude 122°01'15"W; thence to latitude 38°03'43"N and longitude 122°00'28"W; thence to latitude 38°03'41"N and longitude 122°00'03"W; thence to latitude 38°03'18"N and longitude 121°59'31"W, and along the shoreline back to the beginning point.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein is punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, and imprisonment up to 10 years, and a civil penalty of not more than \$25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the

regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 rule will not have a significant economic impact on a substantial number of small entities because, although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels will receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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).

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).

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.

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 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.

Taking of Private Property

This rule 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.

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.