

sections 108 and 1017 of the Internal Revenue Code.

### Need for Correction

As published, the final regulations (TD 9080) contain errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9080), which is the subject of FR Doc. 03-18145, is corrected as follows:

#### § 1.108-7T [Corrected]

■ 1. On page 42592, column 3, § 1.108-7T, paragraph (a)(2), line 2, the language “section 108(b)(5), however, to reduce” is corrected to read “section 108(b)(5), however, to apply any portion of the excluded COD income to reduce”.

■ 2. On page 42592, column 3, § 1.108-7T, paragraph (a)(2), lines 3 thru 7, the language “first the basis of depreciable property to the extent of the excluded COD income. If the basis of depreciable property is insufficient to offset the entire amount of the excluded COD, the” is corrected to read “first the basis of depreciable property to the extent of the excluded COD income is not so applied, the”.

■ 3. On page 42593, column 1, § 1.108-7T, paragraph (d)(ii), of *Example 3*, line 3, the language “trade debts of \$200,000 and a depreciable”, is corrected to read “debts of \$200,000 and a depreciable”.

■ 4. On page 42592, column 1, § 1.108-7T, paragraph (d)(ii), of *Example 3*, line 14, the language “trade debts of \$200,000 and a depreciable”, is corrected to read “debts of \$200,000 and a depreciable”.

■ 5. On page 42593, column 1, § 1.108-7T, paragraph (d)(ii), of *Example 3*, line 19, the language “requirements of section 354(a)(1)(A) and (B).” is corrected to read “requirements of section 354(b)(1) (A) and (B).”.

■ 6. On page 42593, column 1, § 1.108-7T, paragraph (ii), of *Example 3*, line 2, the language “to X’s trade creditors, under section”, is corrected to read “to X’s creditors, under section”.

■ 7. On page 42593, column 1, § 1.108-7T, paragraph (ii), of *Example 3*, line 7, the language “owed the trade creditors for \$100,000, the fair” is corrected to read “owed the creditors for \$100,000, the fair”.

■ 8. On page 42593, column 2, § 1.108-7T, paragraph (ii), of *Example 4*, line 2, the language “distribution of Y stock to X’s trade creditors,” is corrected to read

“distribution of Y stock to X’s creditors.”.

**LaNita Van Dyke,**

*Acting Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-021]

RIN 1625-AA00

### Security Zone; Suisun Bay, Concord, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). The security zone is required to safely onload/offload military equipment. The required security zone is based on recent terrorist actions against the United States and for national security reasons to protect the public and areas surrounding MOTCO from potential terrorist attacks. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding MOTCO unless authorized by the Captain of the Port (COTP), or his designated representative.

**DATES:** This regulation is effective from 9 a.m. PDT on August 20, 2003 to 11:59 p.m. PDT on August 25, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03-021] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Additionally, 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** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation. Publishing a NPRM and delaying its effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

### Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Additionally, the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President’s finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also 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). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the

current threat of attack, MARAD 02-07 (October 10, 2002).

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents, criminal actions, or other causes of similar nature. This zone is also necessary to protect military operations from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

#### Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, under 33 CFR 165.T11-093, encompassing the navigable waters, extending from the surface to the sea floor, bounded by a line connecting 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 may 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 (Pub. L. 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.

## 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.

## 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.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations 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 is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where located under **ADDRESSES**.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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 is revised to read as follows:

**Authority:** 33 U.S.C. 1226, 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 § 165.T11–093 to read as follows:

### **§ 165.T11–093 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.**

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, bounded by a line connecting 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.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Patrol Commander on scene on VHF-FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective period.* This section becomes effective at 9 a.m. PDT on August 20, 2003, and will terminate at 11:59 p.m. PDT on August 25, 2003.

Dated: August 13, 2003.

**Steven J. Boyle,**

*Commander, Coast Guard, Acting Captain of the Port, San Francisco Bay, California.*

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