

November 6, 2000, and believes that the action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. This final rule addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Effects)*

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order since 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. Therefore, a Statement of Energy Effects is not required.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 635**

Construction materials, Design-build, Grant programs, Transportation, Highways and roads, Culvert material types.

Issued on: January 17, 2013.

**Victor M. Mendez,**

*Federal Highway Administrator.*

In consideration of the foregoing, title 23, Code of Federal Regulations, part 635 is amended as follows:

**PART 635—CONSTRUCTION AND MAINTENANCE**

■ 1. Revise the authority citation for part 635 to read as follows:

**Authority:** Sec. 1525 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

■ 2. Amend § 635.411 by adding paragraph (f) to read as follows:

**§ 635.411 Material or product selection.**

\* \* \* \* \*

(f) State transportation departments (State DOTs) shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway.

[FR Doc. 2013–01583 Filed 1–25–13; 8:45 am]

**BILLING CODE 4910–22–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG–2012–1008]

RIN 1625–AA00

**Safety Zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Coast Guard is establishing a safety zone in the navigable waters of Suisun Bay near Military Ocean Terminal Concord, CA in support of military onload and offload operations. This safety zone is established to enhance the safety of mariners transiting the area in the unlikely event of an ordnance related mishap. All persons or vessels are prohibited from anchoring or otherwise loitering in the safety zone during military onloads and offloads without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective with actual notice from January 2, 2013 until January 28, 2013. This rule is effective in the *Code of Federal Regulations* on January 28, 2013. Comments and related materials must be received by the Coast Guard on or before April 29, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of Docket Number USCG–2012–1008. 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 rule, call or email Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at [D11-PF-MarineEvents@uscg.mil](mailto:D11-PF-MarineEvents@uscg.mil).

If you have questions on viewing or submitting material to the docket, call Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

DHS Department of Homeland Security  
FR Federal Register  
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 email 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 rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8-1/2 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 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 now plan to hold a public meeting. But you may submit a request for one on or before December 20, 2012, using one of the methods specified under **ADDRESSES**. Please 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

This interim rule will regulate the waters of Suisun Bay in vicinity of the Military Ocean Terminal Concord (MOTCO) in Concord, California. This rule will be enforced in conjunction with the MOTCO security zone, established in 33 CFR § 165.1199, which restricts vessel traffic during military onloads and offloads at MOTCO.

The Coast Guard is issuing this 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 an NPRM with respect to this rule because to do so would be impracticable. Due to the fact that military loading operations are ongoing, there is a need to begin enforcement of a no-loitering zone immediately, and a notice and comment period would expose the public to additional dangers.

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** because to do otherwise would be impracticable, as immediate prevention measures are needed to protect the maritime public during military onload and offload operations.

## C. Basis and Purpose

The legal basis for the proposed rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C 1221 et seq.).

The U.S. Army's 834th Transportation Battalion requested that the U.S. Coast Guard develop a no-loitering area around the piers at Military Ocean Terminal Concord, CA during military onloads and offloads. In the unlikely event of an explosion due to military loading operations, a no-loitering zone is needed to minimize the likelihood of public presence in the projected blast zone, to protect persons and vessels from the dangers associated with military onload and offload operations.

A safety zone is necessary in the vicinity of MOTCO to prevent persons and vessels from anchoring or otherwise loitering in the zone between 500 yards of MOTCO Pier 2 in position 38°03'30" N, 122°01'14" W (NAD 83) as depicted in National Oceanic and Atmospheric

Administration (NOAA) Chart 18656 (the perimeter of the existing security zone) and 3,000 yards of the pier.

## D. Discussion of Proposed Rule

The Coast Guard is establishing a safety zone in Suisun Bay near MOTCO in Concord California during military onloads and offloads. Given the potentially devastating impact of an ordnance mishap, the Coast Guard is implementing a safety zone around the MOTCO piers during military onloads and offloads. This rule will create a no-loitering area in the zone between 500 yards of MOTCO Pier 2 in position 38°03'30" N, 122°01'14" W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656 (the perimeter of the existing security zone) and 3,000 yards of the pier. The purpose of this safety zone is to prevent persons or vessels from anchoring or loitering within the potential blast zone around the MOTCO piers during military onloads and offloads. This safety zone will be effective for the entire duration of onload and offload operations.

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

The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts anchoring and/or loitering in the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will have access to the waterway for transitory purposes. The entities most likely to be affected by this rule are owners and operators of commercial vessels, and pleasure craft engaged in recreational activities and sightseeing.

## 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 owners and operators of commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. The safety zone does not restrict transitory use of the waterways and is in place to prevent anchoring and loitering within the blast zone. The maritime public will be advised via actual notice during the enforcement of this safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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 (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**, 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 will 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 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 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 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 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. 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 § 165.1198 to read as follows:

**§ 165.1198 Safety zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA.**

(a) *Location.* This safety zone is established in the navigable waters of Suisun Bay near Military Ocean Terminal Concord, CA (MOTCO) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656. Upon commencement of military onloads and offloads, the safety zone will encompass the navigable waters in the area between 500 yards of MOTCO Pier 2 in position 38°03'30" N, 122°01'14" W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656 (the perimeter of the existing security zone) and 3,000 yards of the pier.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced during all military onload and offload operations. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via actual notice on-scene during military onloads and offloads.

(c) *Regulations.* (1) The safety zone is open to all persons and vessels for transitory use.

(2) Persons and vessels operating within the safety zone may not anchor or otherwise loiter within the safety zone.

(3) Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at (415) 556–2760 or VHF Channel 14 to obtain permission.

(4) All persons and vessels transiting through or operating within the safety zone must comply with all directions given to them by the COTP or a designated representative.

(5) The public can contact Sector San Francisco Bay at (415) 399–3530 to obtain information concerning enforcement of this rule.

(d) *Enforcement.* All persons and vessels must comply with the instructions of the COTP or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. The U.S. Coast Guard may be assisted in the patrol and enforcement

of the safety zone by local law enforcement and the MOTCO police as necessary. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: January 2, 2013.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2013–01635 Filed 1–25–13; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG–2012–1062]

**RIN 1625–AA00**

**Safety Zone, Atlantic Intracoastal Waterway; Oak Island, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is extending the temporary safety zone established on the waters of the Atlantic Intracoastal Waterway at Oak Island, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The safety zone extension will temporarily restrict vessel movement within the designated area starting on February 14, 2013 through June 15, 2013.

**DATES:** This rule is effective from February 14, 2013 through June 15, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–1062]. 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 rule, call or email CWO4 Joseph M. Edge, U.S. Coast

Guard Sector North Carolina; telephone 252–247–4525, email

[Joseph.M.Edge@uscg.mil](mailto:Joseph.M.Edge@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking

**A. Regulatory History and Information**

The Coast Guard is extending the initial Temporary Final Rule USCG–2012–0431. On June 15, 2012 a Notice to Proposed Rulemaking was published in 77 FR 35906 for USCG -2012–0431. A subsequent Notice to Proposed Rulemaking was published on September 13, 2012 in 77 FR 56587 for USCG–2012–0811. We received no comments on this proposed rule.

**B. Basis and Purpose**

North Carolina Department of Transportation has awarded a contract to Marine Contracting Corporation of Virginia Beach, Virginia to perform bridge maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The contract provides for replacing the fender system which commenced on September 12, 2012 with an initial completion date of December 12, 2012. Subsequently, the contractor was granted an extension by North Carolina Department of Transportation until February 14, 2013. However, due to the presence of rock on the sea bed, which has impacted the construction progress, NCDOT has granted an additional extension until June 15, 2013 to complete the bridge maintenance. The contractor will utilize a 140 foot deck barge with a 40 foot beam as a work platform and for equipment staging. This safety zone will provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance. During this period the Coast Guard will require a one hour notification to the work supervisor at the NC 133 Fixed Bridge at the Atlantic Intracoastal Waterway crossing, mile 311.8, Oak Island, North Carolina. The notification requirement will apply during the maintenance period for vessels requiring a horizontal clearance of greater than 50 feet.

**C. Discussion of the Final Rule**

The temporary safety zone will encompass the waters directly under the