

Dated: September 8, 2021.

David E. O'Connell,

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2021-0732]

RIN 1625-AA00

#### Safety Zone; Explosives arc at Military Ocean Terminal Concord, Suisun Bay, Concord, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the Suisun Bay, off Concord, CA, in support of explosive off and on-loading to Military Ocean Terminal Concord (MOTCO). This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

**DATES:** This rule is effective without actual notice from September 14, 2021 through 11:59 p.m. September 18, 2021. For the purposes of enforcement, actual notice will be used from September 13, 2021 until September 14, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0732 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade William Harris, Waterways Management, U.S. Coast Guard; telephone (415) 399-7443, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section

U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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 a notice of proposed rulemaking (NPRM) with respect to this rule because it is impractical. The Coast Guard received the initial report of larger explosives arc on September 8, 2021. It is impractical to go through the full notice and comment rule making process because the Coast Guard must establish this temporary safety zone by September 13, 2021 and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

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**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment in the navigable waters around the potentially hazardous explosive off and on-loading.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco (COTP) has determined that potential hazards associated with the explosive off and on-loading will exist between September 13, 2021 and September 18, 2021. There will be a safety concern for anyone within a 4,500-foot radius of the explosive off and on-load. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters surrounding the potentially hazardous off and on-loading operations.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone in the navigable waters around the explosives off and on-loading occurring at MOTCO off Concord, CA for a five-day cargo operation period conducted between

September 13, 2021 and September 18, 2021. The temporary safety zone will encompass the navigable waters of Suisun Bay, from surface to bottom, within a circle formed by connecting all points 4,500 feet out from the location of the explosive material at approximate position 38°3.54' N, 122°0.82' W or as announced via Broadcast Notice to Mariners. The projected explosive arc presents the need for a 4,500 foot radius, which is larger than the safety zone already established in 33 CFR 165.1198.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the explosive materials during cargo operations, and to ensure the safety of personnel, vessels, and the marine environment. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. A "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

## 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 and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 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. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the water encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

### 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 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.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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 call or email 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 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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.

### 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 Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 temporary safety zone in the navigable waters around the explosives off and on-loading occurring at Military Ocean Terminal Concord (MOTCO), off Concord, CA. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T11–066 to read as follows:

### § 165.T11–066 Safety Zone; Explosive arc at Military Ocean Terminal Concord, Suisun Bay, Concord, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of Suisun Bay, from surface to bottom, within a circle formed by connecting all points 4,500 feet out from the location of the explosive material at approximate position 38°3.54′ N, 122°0.82′ W or as announced via Broadcast Notice to Mariners.

(b) *Definitions.* As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP’s designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through

the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from September 13, 2021 at 12:01 a.m. until September 18, 2021 at 11:59 p.m. or as announced via marine information broadcast.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with 33 CFR 165.7.

Dated: September 9, 2021.

**Jordan M. Baldueza,**  
Captain, U.S. Coast Guard, Alternate Captain  
of the Port, Sector San Francisco.

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

#### RIN 2900–AR22

### Extension of the Presumptive Period for Compensation for Persian Gulf War Veterans

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim Final Rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by Veterans who served in the Persian Gulf War. This amendment is necessary to extend the presumptive period for qualifying chronic disabilities resulting from undiagnosed illnesses that must manifest to a compensable degree in order to establish entitlement to disability compensation benefits. The intended effect of this amendment is to provide consistency in VA adjudication policy, preserve certain rights afforded to Persian Gulf War Veterans and ensure fairness for current and future Persian Gulf War Veterans.

#### DATES:

*Effective date:* This interim final rule is effective September 14, 2021.

*Applicability date:* The provisions of this interim final rule shall apply to all applications for benefits that are received by VA on or after the effective date of this interim final rule or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this interim final rule.

*Comments due date:* Comments must be received on or before October 14, 2021.

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate that they are submitted in response to “RIN 2900–AR22—Extension of the Presumptive Period for Compensation for Persian Gulf War Veterans.” Comments received will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Robert Parks, Chief, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9540. (This is not a toll-free telephone number.)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In response to the needs and concerns of Veterans who served in the Southwest Asia theater of operations during the Persian Gulf War, Congress enacted the Persian Gulf War Veterans' Benefits Act, Title I of the Veterans' Benefits Improvement Act of 1994, Public Law 103–446, which was codified in relevant part at 38 U.S.C. 1117. This law provided authority for the Secretary of Veterans Affairs (Secretary) to compensate eligible Persian Gulf War Veterans with a chronic disability resulting from an undiagnosed illness. That illness must have become manifest either during active duty service in the Southwest Asia theater of operations during the Persian Gulf War, or disabling to a degree of 10 percent or more during a period determined by the Secretary and prescribed by regulation. The Secretary would determine this period after reviewing any credible medical or scientific evidence, the historical treatment afforded disabilities for which VA had established such periods, and other pertinent circumstances regarding the experiences of Veterans of the Persian Gulf War.

As required by Public Law 105–368, the National Academy of Sciences (NAS) reviewed, evaluated, and summarized the scientific and medical literature for possible association between service in the Southwest Asia theater of operations and long-term adverse health effects. Following review of NAS reports on Gulf War and Health, volumes 9, 10, and 11, VA concludes that the evidence remains inconclusive regarding the time of onset of undiagnosed and other illnesses related to Persian Gulf War service. (NAS

reports are available at <http://nationalacademies.org>)

##### II. Extension of Current Deadline

Currently, military operations in the Southwest Asia theater of operations continue. No end date for the Persian Gulf War has been established by Congress or the President. See 38 U.S.C. 101(33) (defining the term “Persian Gulf War”). Because scientific uncertainty remains as to the cause and time of onset of illnesses suffered by Persian Gulf War Veterans and current research studies are inconclusive, limiting entitlement to benefits payable under 38 U.S.C. 1117 due to the expiration of the presumptive period in 38 CFR 3.317(a)(1)(i) would be premature. If extension of the current presumptive period is not implemented, servicemembers whose conditions manifest after December 31, 2021, would be substantially disadvantaged compared to servicemembers whose conditions manifested at an earlier date.

Therefore, VA is extending the presumptive period in 38 CFR 3.317(a)(1)(i) for qualifying chronic disabilities that become manifest to a degree of 10 percent or more through December 31, 2026 (a period of five years), to ensure those benefits established by Congress are fairly administered.

##### Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date. Absent extension of the sunset date in the current regulation, VA's authority to provide benefits in new claims for qualifying chronic disability in Persian Gulf War Veterans will lapse on December 31, 2021. A lapse of such authority would be contrary to the public interest because it would have a significant adverse impact on veterans disabled due to such disabilities. To avoid such impact, VA is issuing this rule as an interim final rule, effective upon date of publication. However, VA invites public comments on this interim final rule and will fully consider and address any comments received.

##### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,