

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[COTP San Francisco Bay 05-008]

RIN 1625-AA87

**Security Zones; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, CA****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary fixed security zones in the waters extending approximately 100 yards around six separate oil refinery piers in the San Francisco Bay area. These security zones are an integral part of the Coast Guard's efforts to protect these facilities and the surrounding areas from destruction or damage due to accidents, subversive acts, or other causes of a similar nature. Entry into the zones is prohibited, unless specifically authorized by the Captain of the Port (COTP) San Francisco Bay, or his designated representative. These zones will be subject to discretionary and random patrol and monitoring by Coast Guard, Federal, state and local law enforcement assets.

**DATES:** This rule is effective from 11:59 p.m. PDT on September 9, 2005, to 11:59 p.m. PST on March 31, 2006.

**ADDRESSES:** Documents indicated in this preamble, as being available in the docket, are part of docket COTP 05-008 and are available for inspection or copying at the Waterways Safety Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Ian Callander, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco, (510) 437-3401 or the Sector San Francisco Command Center, at (415) 399-3547.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because the threat to U.S. assets and the public currently exists and is ongoing and any delay in the effective date of this temporary final rule (TFR) is impractical and contrary to the public interest.

For the same reasons, 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**.

Elsewhere in this issue of the **Federal Register** we have published a notice of proposed rulemaking (NPRM) under docket COTP San Francisco Bay 05-007, in which we will propose to make permanent these six temporary security zones. This TFR will provide security around the marine oil refinery facilities during the notice-and-comment rulemaking that proposes to make the security zones in these same locations permanent.

**Background and Purpose**

In its effort to manage the threat posed by terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. The measures contemplated by this rule are intended to assist the Coast Guard in protecting vessels and facilities within or adjacent to the six marine oil terminals in San Francisco Bay. 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.

To address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against marine oil terminals within San Francisco Bay would have on the public interest, the Coast Guard is establishing temporary fixed security zones in the waters extending approximately 100 yards around six separate oil refinery piers in the San Francisco Bay, California. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these facilities. Due to heightened security concerns, and due to the catastrophic impact a terrorist attack on a marine oil terminal would have on the surrounding waterways, area, and community, security zones are prudent for these facilities.

**Discussion of Rule**

In this temporary final rule, the Coast Guard is establishing temporary fixed security zones in the waters extending from the surface to the sea floor and approximately 100 yards around six separate oil refinery piers in the San Francisco Bay Area. The specific coordinates defining these zones are given in paragraph (a) of temporary section 33 CFR 165.T11-039.

For the Chevron-Texaco oil facility, the proposed security zone would extend approximately 100 yards into the waters of San Francisco Bay around the Chevron Long Wharf, located in Richmond, California.

For the Conoco-Phillips oil facility, the proposed security zone would extend approximately 100 yards into the waters of San Pablo Bay around the Conoco-Phillips Wharf, located in Rodeo, California.

For the Shell Martinez oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Shell Terminal, located in Martinez, California.

For the Tesoro-Amorco oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Amorco Pier, located in Martinez, California.

For the Valero oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Valero Pier, located in Benicia, California.

For the Tesoro-Avon oil facility, the proposed security zone would extend approximately 100 yards into the waters of Suisun Bay around the Avon Pier, located in Martinez, California.

These zones will be subject to discretionary and random patrol and monitoring by Coast Guard, Federal, State and local law enforcement assets. Vessels and people may be allowed to enter these security zones on a case-by-case basis with authorization from the COTP or his designated representative.

Vessels or persons violating this rule 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 \$32,500 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 may enlist the aid and cooperation of any Federal, State, county, municipal, or private agency to assist in the enforcement of the regulation.

#### 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).

We expect the impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule restricts access to the waters encompassed by the security zones, the effect of this rule is not significant because: (i) The zones encompass only small portions of the waterways; (ii) vessels are able to pass safely around the zones; and (iii) vessels 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 zones is the minimum necessary to provide adequate protection for all of the six marine oil facilities. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

#### 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. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by these security zones. These security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the security zones and vessels engaged in recreational activities, sightseeing and commercial fishing have space outside of the zones to engage in these activities. Small entities and the maritime public will be advised of these security zones 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 offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their

regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**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.

An “Environmental Analysis Check List” and a “Categorical Exclusion Determination” (CED) will be available in the docket where indicated under **ADDRESSES**.

**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. 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 temporary § 165.T11–039, to read as follows:

**§ 165.T11–039 Security Zones; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, California.**

(a) *Locations.* The following areas are security zones:

(1) *Chevron Richmond Long Wharf, San Francisco Bay.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Chevron Richmond Long Wharf and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	Longitude
37°55'52.2" N	122°24'04.7" W
37°55'41.8" N	122°24'07.1" W
37°55'26.8" N	122°24'35.9" W
37°55'47.1" N	122°24'55.5" W
37°55'42.9" N	122°25'03.5" W
37°55'11.2" N	122°24'32.8" W
37°55'14.4" N	122°24'27.5" W
37°55'19.7" N	122°24'23.7" W
37°55'22.2" N	122°24'26.2" W
37°55'38.5" N	122°23'56.9" W
37°55'47.8" N	122°23'53.3" W

and along the shoreline back to the beginning point.

(2) *Conoco-Phillips, San Pablo Bay.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Conoco-Phillips Rodeo Terminal and encompasses all waters in San Pablo Bay within a line connecting the following geographical positions—

Latitude	Longitude
38°03'06.0" N	122°15'32.4" W
38°03'20.7" N	122°15'35.8" W
38°03'21.8" N	122°15'29.8" W
38°03'29.1" N	122°15'31.8" W
38°03'23.8" N	122°15'55.8" W
38°03'16.8" N	122°15'53.2" W
38°03'18.6" N	122°15'45.2" W
38°03'04.0" N	122°15'42.0" W

and along the shoreline back to the beginning point.

(3) *Shell Martinez, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Shell Martinez Terminal and encompasses all waters in San Pablo Bay within a line connecting the following geographical positions—

Latitude	Longitude
38°01'39.8" N	122°07'40.3" W
38°01'54.0" N	122°07'43.0" W
38°01'56.9" N	122°07'37.9" W
38°02'02.7" N	122°07'42.6" W
38°01'49.5" N	122°08'08.7" W
38°01'43.7" N	122°08'04.2" W
38°01'50.1" N	122°07'50.5" W
38°01'36.3" N	122°07'47.6" W

and along the shoreline back to the beginning point.

(4) *Tesoro-Amorco, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Tesoro-Amorco oil terminal wharf and encompasses all waters in the

Carquinez Strait within a line connecting the following geographical positions—

Latitude	Longitude
38°02'03.1" N	122°07'11.9" W
38°02'05.6" N	122°07'18.9" W
38°02'07.9" N	122°07'14.9" W
38°02'13.0" N	122°07'19.4" W
38°02'05.7" N	122°07'35.9" W
38°02'00.5" N	122°07'31.1" W
38°02'01.8" N	122°07'27.3" W
38°01'55.0" N	122°07'11.0" W

and along the shoreline back to the beginning point.

(5) *Valero, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Valero Benicia Pier and encompasses all waters in the Carquinez Strait within a line connecting the following geographical positions—

Latitude	Longitude
38°02'37.6" N	122°07'51.5" W
38°02'34.7" N	122°07'48.9" W
38°02'44.1" N	122°07'34.9" W
38°02'48.0" N	122°07'37.9" W
38°02'47.7" N	122°07'42.1" W

and along the shoreline back to the beginning point.

(6) *Tesoro-Avon, Suisun Bay.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Tesoro-Avon Wharf and encompasses all waters in Suisun Bay within a line connecting the following geographical positions—

Latitude	Longitude
38°02'24.6" N	122°04'52.9" W
38°02'54.0" N	122°05'19.5" W
38°02'55.8" N	122°05'16.1" W
38°03'02.1" N	122°05'19.4" W
38°02'55.1" N	122°05'42.6" W
38°02'48.8" N	122°05'39.2" W
38°02'52.4" N	122°05'27.7" W
38°02'46.5" N	122°05'22.4" W

and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, entry into the security zones described in paragraph (a) of this section is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of a security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) 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 designated representative.

(c) *Enforcement.* All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port 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. 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.

The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by local law enforcement as necessary.

(d) *Effective period.* This section becomes effective at 11:59 p.m. PDT on September 9, 2005, and will terminate at 11:59 p.m. PST on March 31, 2006.

Dated: September 9, 2005.

**W.J. Uberti,**

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

[FR Doc. 05-18936 Filed 9-21-05; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD01-05-085]

RIN 1625-AA00

#### Safety Zone; Blasting Operations, Demolition of Bridge Piers: Sikorsky Bridge Over the Housatonic River Between Stratford and Milford, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone within 300-yards of the Sikorsky Bridge, which runs between Milford and Stratford, CT. This temporary safety zone is necessary to protect the maritime community transiting the area from the potential safety hazards associated with the demolition and blasting operations of the piers of the old Sikorsky Bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound, New Haven, Connecticut.

**DATES:** This rule is effective from 6 a.m. September 26, 2005 through 6 p.m. October 6, 2005.

**ADDRESSES:** Comments and material received from the public, as well as

documents indicated in this preamble as being available in the docket, are part of docket CGD01-05-085 and are available for inspection or copying at Coast Guard Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant A. Logman, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468-4429.

#### 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 an NPRM. The Coast Guard was notified by the bridge owner, Connecticut Department of Transportation, of the dates of blasting and demolition operations on August 24, 2005, leaving insufficient time to draft and publish an NPRM and to publish a final rule more than 30 days prior to the effective date. Under 5 U.S.C. (d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would be contrary to the public interest as immediate action is necessary to close a portion of the Housatonic River within the vicinity of the Sikorsky Bridge to protect the maritime public from the hazards associated with blasting and debris removal operations for four piers from the old Sikorsky Bridge.

##### Background and Purpose

The Connecticut Route 15 Bridge over the Housatonic River, also known as the Sikorsky Bridge, is currently being rebuilt. Part of this process has included the demolition of the old Sikorsky Bridge. Piers from the old Bridge remain as hazards to navigation in the waterway and must be removed prior to further construction of the southern span of the new bridge. When detonated, spread of the debris will be minimized by a containment structure around each bridge pier. The blasting and demolition activities have been approved by the Connecticut Department of Environmental Protection to conduct blasting operations. This blasting will also require a Coast Guard explosives handling permit in accordance with 46 Code of Federal Regulations Part 176 as the explosives being used are being loaded onto vessels prior to being placed on the respective piers. The explosives loads onto vessels

will be monitored by Coast Guard personnel.

##### Discussion of Rule

This rule establishes a temporary safety zone on all waters within 300-yards of the Piers of the old Sikorsky Bridge, Route 15 Bridge over the Housatonic River running between Milford and Stratford, CT. This action is intended to prohibit entry of persons and vessel traffic in a portion of the Housatonic River for the protection of life and property of the maritime public from the potential hazards associated with blasting operations and demolition of four piers of the old Sikorsky Bridge. The safety zone will be in effect for approximately 8 days; however, the zone will only be enforced for approximately four-30 minute periods during the blasting of each of the four bridge piers being demolished. Public notifications will be made of this safety zone via marine information broadcasts beginning 1 hour prior to the detonation of the explosives for each of the four piers. The detonations will take place during daylight hours, and will be conducted during high tide.

Any violation of the safety zone described herein, is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

##### 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule may have some impact on the public, but these potential impacts will be minimized for the following reasons: This zone covers only a portion of the waters of the Housatonic River, and does not impact commercial vessels. Although this safety zone is in effect for 8 days, the safety zone will only be enforced during blasting operations, encompassing approximately 4 thirty minute periods over the 8 days.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered