

Dated: April 28, 2021.

Jason P. Tama,

Captain, U.S. Coast Guard, Captain of the Port New York.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2021-0349]

RIN 1625-AA00

#### Safety Zone; Explosive 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 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 permission of the Captain of the Port San Francisco or a designated representative.

**DATES:** This rule is effective without actual notice from May 26, 2021 through 11:59 p.m. on June 4, 2021. For the purposes of enforcement, actual notice will be used from 12:01 a.m. May 24, 2021 until May 26, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0349 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Anthony Solarees, 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  
COTP Captain of the Port San Francisco  
DHS Department of Homeland Security  
§ 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 with respect to this rule because it is impracticable. The Coast Guard received the initial report of larger explosive arc on May 18, 2021. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this temporary safety zone by May 24, 2021 and lacks sufficient time to provide a reasonable comment period and 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 on-loading.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the explosive on-loading will exist between May 24, 2021 and June 4, 2021. There will be a safety concern for anyone within a 4,000-ft radius of the explosive 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 on-loading operations.

##### IV. Discussion of the Rule

This rule establishes a temporary safety zone in the navigable waters around the explosives on-loading occurring at Military Ocean Terminal Concord (MOTCO), off Concord, CA for a five-day cargo operation period conducted between May 24, 2021 and June 4, 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 4,000 feet out from the location of the explosive material at approximate position 38°3.46" N, 122°0.90" W or as announced via Broadcast Notice to Mariners. The projected explosive arc presents the need for a 4,000 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, 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 waterway 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 contact 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 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 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.

#### 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. 0170.1.

■ 2. Add § 165.T11–054 to read as follows:

#### § 165.T11–054 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 4,000 feet out from the location of the explosive material at approximate position 38°3.46’ N, 122°0.90’ 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 operating a Coast Guard vessel or a Federal, State, or local 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 May 24, 2021 at

12:01 a.m. until June 4, 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: May 21, 2021

**Jordan M. Balduenza,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2020-0319; FRL-10023-71-Region 3]

### Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the York-Adams Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the "1997 ozone NAAQS") for the York-Adams Area of Pennsylvania. EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on June 25, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0319. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Keila M. Pagán-Incle, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2926. Ms. Pagán-Incle can also be reached via electronic mail at [pagan-incle.keila@epa.gov](mailto:pagan-incle.keila@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 9, 2021 (86 FR 8736), EPA published a notice of proposed rulemaking (NPRM). In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the York-Adams Area through February 13, 2028, in accordance with CAA section 175A. The formal SIP revision was submitted by PADEP on March 10, 2020.

##### II. Summary of SIP Revision and EPA Analysis

On January 14, 2008 (73 FR 2163, effective February 13, 2008), EPA approved a redesignation request (and maintenance plan) from PADEP for the York-Adams Area. Per CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,<sup>1</sup> the D.C. Circuit held that this requirement cannot be waived for areas, like the York-Adams Area, that had been redesignated to attainment for the 1997 ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.<sup>2</sup> PADEP's March 10, 2020 SIP submittal fulfills

<sup>1</sup> 882 F.3d 1138 (D.C. Cir. 2018).

<sup>2</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

Pennsylvania's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the February 9, 2021 NPRM, consistent with longstanding EPA's guidance,<sup>3</sup> areas that meet certain criteria may be eligible to submit a limited maintenance plan (LMP) to satisfy one of the requirements of CAA section 175A. Specifically, states may meet CAA section 175A's requirements to "provide for maintenance" by demonstrating that the area's design value<sup>4</sup> are well below the NAAQS and that it has had historical stability attaining the NAAQS. EPA evaluated PADEP's March 10, 2020 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the York-Adams Area as a revision to the Pennsylvania SIP. The effect of this action makes certain commitments related to the maintenance of the 1997 ozone NAAQS federally enforceable as part of the Pennsylvania SIP. Other specific requirements of PADEP's March 10, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

##### III. EPA's Response to Comments Received

EPA received one comment on the February 9, 2021 NPRM and a summary of the comment and EPA's response is provided herein. The comment received is in the docket for this rulemaking action.

*Comment:* The commenter asserts that the LMP should not be approved because "Pennsylvania identifies no actual contingency measures." According to the commenter, a "contingency measure is supposed to be a known measure that can be quickly implemented by a state in order to prevent the violation of the NAAQS." The comment asserts that current contingency measures are defective because they allegedly will not be evaluated and determined until after an exceedance of the NAAQS has occurred.

<sup>3</sup> See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001.

<sup>4</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.