

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Although this proposed 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 proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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.

#### Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (32) (e) of Commandant Instruction M16475.ID, this proposed rule is categorically excluded from further environmental documentation.

#### Indian Tribal Governments

This proposed 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 proposed 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### List of Subjects in 33 CFR Part 117:

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.317(k) is added to read as follows:

#### § 117.317 Okeechobee Waterway.

\* \* \* \* \*

(k) *Caloosahatchee River Bridge (SR 29), mile 103, Labelle, Florida.* The Caloosahatchee River bridge (SR 29), mile 103, shall open on signal, except that from 7 a.m. until 9 a.m. and from 4 p.m. until 6 p.m., Monday through Friday, except Federal holidays, the bridge need not open. Tugs with tows, public vessels of the United States and vessels in distress shall be passed at any time.

Dated: February 24, 2003.

**James S. Carmichael,**

*Rear Admiral, Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 03-6637 Filed 3-18-03; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-004]

**RIN 1625-AA00**

#### Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone in the navigable waters of the Mission Creek Waterway in China Basin surrounding the construction site of the Fourth Street Bridge, San Francisco, California. This

temporary safety zone is necessary to protect persons and vessels from hazards associated with bridge construction activities. The safety zone will temporarily prohibit usage of the Mission Creek Waterway surrounding the Fourth Street Bridge; specifically, no persons or vessels will be permitted to come within 100 yards of either side of the bridge or pass beneath the bridge during construction, unless authorized by the Captain of the Port, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before April 7, 2003.

**ADDRESSES:** You may mail comments and related material to U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Diana Cranston, Chief, Waterways Management Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-3073.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco Bay 03-004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause

for doing so as required by 5 U.S.C. 553(d)(3).

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

### Background and Purpose

The San Francisco Department of Public Works is requesting a waterway closure on Mission Creek for the purpose of performing significant work to the Fourth Street Bridge. The Fourth Street Bridge was erected across the Mission Creek Waterway at the China Basin in 1917, and was determined eligible for listing in the National Register of Historic Places in 1985 as part of the California Department of Transportation (Caltrans) Historic Bridge Inventory. Caltrans, Division of Structures, evaluated the Fourth Street Bridge and recommended that the bridge be brought up to current seismic safety standards. In view of extensive corrosion to the steel components and concrete approaches of the bridge, Caltrans has also placed traffic load limitations over this bridge. Three primary objectives are to be met in rehabilitating the Fourth Street Bridge: (i) Seismically retrofit the structure while not significantly altering the historical appearance of the bridge; (ii) repair the damage to the concrete approaches and several steel and concrete members of the movable span, and (iii) reinstate light rail service across the bridge.

The first phase of this project will entail the removal of the lift span, which will take approximately 6 weeks, scheduled to begin April 15, 2003. During this period, the channel will be closed at the Fourth Street Bridge to boating traffic. The second phase of this project will entail the construction of the north and south approaches, the new counterweight and its enclosing pit; but for the most part, boating traffic will not be affected during this phase. The last phase of this project will entail the replacement of the lift span and aligning the bridge to accept the light rail track system, which will take approximately five months, scheduled to begin April 1, 2004. During this period, the channel will be closed at the Fourth Street Bridge to boating traffic.

The Fourth Street Bridge Project is funded by Federal Highway

Administration and State of California. The state funding restricts the construction to a start date before August 2003 and completion by September 2005. Any additional delays or deferrals in start of construction will impact the secured funding for the project.

There are two major environmental issues that restrict the construction in the channel, namely the annual Pacific hearing-spawning season that runs from December 1st to March 31st and noise constraint in the water for steelhead from December 1st to June 1st. Any demolition, pile driving and excavation in the water during those time periods will be monitored and restricted for possible impact on the fish.

The Fourth Street Bridge Project is part of the larger Third Street Light Rail Project and many public presentations on the project's components, channel closure schedules, impacts to surrounding uses and project duration have been made by the City and Port of San Francisco. The Third Street Light Rail Advisory Group was created as a forum to keep the public informed on the progress being made on the Third Street Light rail project. Also, this project has been presented at several Mission Bay Citizen Advisory Committee meetings. At these meetings, the public was notified of the project components, impacts and the need to temporarily close the waterway. Specific to the Fourth Street Bridge project, an Environmental Assessment, required by the Federal Highway Administration and Caltrans, (under the National Environmental Protection Act) was conducted by the City of San Francisco. A public hearing regarding the Environmental Assessment was held on January 17, 2002, at San Francisco Arts College, Timken Lecture Hall, 1111 8th Street in San Francisco, California, and was well attended.

In January 2003, the City of San Francisco advised the Coast Guard Captain of the Port that two channel closures would be necessary in order to accomplish the Fourth Street Bridge project. The Coast Guard met with various City and Port officials to ensure that there would be minimal impacts on involved and potentially involved entities.

This proposed temporary safety zone in the navigable waters of Mission Creek surrounding the construction site of the Fourth Street Bridge would be in effect during the course of a 6-week period, starting April 15, 2003, and again for a 5-month period, starting April 1, 2004. Both periods would be effective 24 hours a day.

### Discussion of Rule

The Coast Guard proposes to establish a safety zone that consists of a portion of the navigable waters located at the Fourth Street Bridge in the Mission Creek Waterway in China Basin, San Francisco, California. The proposed safety zone is to affect a waterway closure during periods of demolition and reconstruction of the Fourth Street Bridge and would be effective 24 hours a day between April 15, 2003, and May 27, 2003, and again between April 1, 2004, and September 1, 2004.

The proposed safety zone is necessary to protect persons and vessels from hazards, injury and damage associated with bridge construction activities. No vessel or person may come within 100 yards of either side of the bridge, or pass beneath the bridge during construction.

The proposed safety zone would encompass the navigable waters, from the surface to the bottom, within two lines; one line drawn from a point on the north shore of Mission Creek extending southeast to a point on the opposite shore, 100 yards west of the bridge, and the other line drawn from a point on the north shore of Mission Creek extending southeast to a point on the opposite shore, 100 yards east of the bridge.

Vessels and people may be allowed to enter an established safety zone on a case-by-case basis with authorization from the Captain of the Port or a designated representative thereof. Section 165.23 of title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in this Safety Zone.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, is punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Coast Guard personnel will enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and 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 Transportation (DOT) (44 FR 11040, February 26, 1979). Due to the limited scope of the safety zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary.

## 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. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

The Mission Creek Harbor Association has a lease agreement with the Port of San Francisco for both houseboats and pleasure boats to moor at the head of the channel. The channel closure will not impact land access to the houseboats during the bridge closures, however during the two channel closures, a small number of sail boats that moor in the harbor may be impacted. The Department of Public Works and the Port of San Francisco are in consultation with the Mission Creek Harbor Association to assess the temporary impacts to the boaters on closing the channel for this needed work.

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.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

## Collection of Information

This regulation contains no collection of information requirements 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because we are establishing a safety zone. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.T11–079 to read as follows:

### **§ 165.T11–079 Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California.**

(a) *Location.* One hundred yards to either water-side of the Fourth Street Bridge, encompassing the navigable waters, from the surface to the bottom, within two lines; one line drawn from a point on the north shore of Mission Creek [37°46'29" N, 122°23'36" W] extending southeast to a point on the opposite shore [37°46'28" N, 122°23'34" W], and the other line drawn from a point on the north shore of Mission Creek [37°46'34" N, 122°23'30" W] extending southeast to a point on the opposite shore [37°46'33" N, 122°23'28" W]. [Datum: NAD 83].

(b) *Effective dates.* The safety zone will be in effect from 11:59 p.m. (PDT) on April 14, 2003 to 11:59 p.m. (PDT) on May 27, 2003 and from 11:59 p.m. (PST) on March 31, 2004 to 11:59 p.m. (PDT) on September 1, 2004. If the need for either of the safety zones ends before the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone(s) and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or a designated representative thereof.

(d) *Enforcement.* All persons and vessels shall 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 shall proceed as directed.

Dated: February 28, 2003.

**S.J. Boyle,**

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

[FR Doc. 03–6641 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[KY–143–200315; FRL–7469–1]**

### **Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to Maintenance Plan for Northern Kentucky**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a revision to the state implementation plan (SIP) of the Commonwealth of Kentucky to revise the motor vehicle emissions budgets (MVEBs) for the Northern Kentucky maintenance area for the year 2010. The Northern Kentucky maintenance area, a subset of the Cincinnati-Hamilton maintenance area, includes the three Kentucky counties of Boone, Campbell and Kenton. The revision to the MVEBs is allowable because of an available safety margin for volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) for the Northern Kentucky portion of the maintenance area. The Commonwealth's submittal also requests to clearly identify that the Ohio portion and the Kentucky portion of the Cincinnati-Hamilton maintenance area will have subarea MVEBs for the purposes of implementing transportation conformity. Ohio will make a similar request for subarea MVEBs for this area in an upcoming revision to the Cincinnati-Hamilton county maintenance plan. Kentucky has requested that EPA parallel process this revision because the revision is not yet state-effective.

**DATES:** Written comments must be received on or before April 18, 2003.

**ADDRESSES:** All comments should be addressed to: Michele Notarianni; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency, Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov) (e-mail))

Copies of documents relative to this action are available at the following

addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov))  
Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

Persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY143. (Telephone number: 404/562–9031)

### **FOR FURTHER INFORMATION CONTACT:**

Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov) (e-mail))

**SUPPLEMENTARY INFORMATION:** This section is organized as follows:

- I. What is the background for this action?
- II. Who is affected by this action?
- III. What is transportation conformity?
- IV. What is an MVEB?
- V. What is a safety margin?
- VI. How does this action change implementation of transportation conformity for the Kentucky portion of the Cincinnati-Hamilton maintenance area?
- VII. What is parallel processing?
- VIII. Proposed action
- IX. Statutory and Executive Order Reviews

### **I. What Is the Background for This Action?**

The Commonwealth of Kentucky submitted a request on February 6, 2003, to revise the MVEBs for the Northern Kentucky maintenance area for the year 2010. The Northern Kentucky area (*i.e.*, Boone, Campbell and Kenton counties), in conjunction with the Cincinnati-Hamilton County area in Ohio, was designated as a nonattainment area for the 1-hour ozone national ambient air quality standard (NAAQS) per the Clean Air Act as amended in 1990. In October 1999, after the area had three consecutive years of “clean” air quality data, the Commonwealth of Kentucky, through the Kentucky Department of Air Quality (KDAQ), submitted a redesignation request and a maintenance plan for the Northern Kentucky area to EPA. On June 19, 2000, EPA redesignated the Northern Kentucky area to attainment for the 1-hour ozone NAAQS and approved the maintenance plan for the Northern Kentucky area (65 FR 37879).