

not open for the passage of vessel traffic from 10 a.m. to 5 p.m. on June 5, 2004.

(b) The opening signal for each drawbridge is two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal is three prolonged blasts when the draw can be opened immediately and two prolonged blasts when the draw cannot be opened or is open and must be closed.

Dated: May, 25, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting  
Commander, First Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-026]

RIN 1625-AA00

#### Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a security zone extending approximately 150 feet into the navigable waters of the Oakland Estuary, Alameda, California, surrounding the United States Coast Guard Island Pier. This action is necessary to provide for the security of the military service members on board vessels moored at the pier and the government property associated with these valuable national assets. This security zone prohibits all persons and vessels from entering, transiting through or, anchoring within a portion of the Oakland Estuary surrounding the Coast Guard Island Pier unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** This rule is effective July 7, 2004.

**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 COTP 03-026 and are available for inspection or copying at the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**  
Lieutenant Doug Ebberts, U.S. Coast

Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On January 29, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA" in the **Federal Register** (69 FR 4267) proposing to establish a permanent security zone extending approximately 150 feet into the navigable waters of the Oakland Estuary surrounding the United States Coast Guard Island Pier. We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

##### Penalties for Violating Security Zone

Vessels or persons violating this security zone 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.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, or private agency to assist in the enforcement of the regulation.

##### Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS Cole and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. 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.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent a terrorist attack against a Coast Guard Cutter, the Coast Guard is establishing a permanent, fixed security zone around and under the United States Coast Guard Island Pier that encompasses all

waters of the Oakland Estuary, extending from the surface to the sea floor, within approximately 150 feet of the pier. The perimeter of the security zone commences at a point on land approximately 150 feet north of the northern end of the Coast Guard Island Pier at latitude 37°46'53.6" N and longitude 122°15'06.1" W; thence out to the edge of the charted channel at latitude 37°46'52.3" N and longitude 122°15'07.9" W; thence along the edge of the charted channel to latitude 37°46'42.2" N and longitude 122°14'50.5" W; thence to a point on land approximately 150 feet south of the southern end of the Coast Guard Island Pier at latitude 37°46'44.8" N and longitude 122°4'48.8" W; thence along the shoreline back to the beginning point, latitude 37°46'53.6" N and longitude 122°15'06.1" W.

This security zone is needed for national security reasons to protect Coast Guard Cutters, their crews, the public, transiting vessels, and adjacent waterfront facilities from potential subversive acts, accidents or other events of a similar nature. This security zone will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against Coast Guard Cutters that moor at the Coast Guard Island Pier by providing a surveillance and detection perimeter, and a margin of response time for security personnel. This rule, for security reasons, would prohibit entry of any vessel or person inside the security zone without specific authorization from the Captain of the Port or his designated representative. Due to heightened security concerns and the catastrophic impact a terrorist attack on a Coast Guard Cutter would have on the crew on board and surrounding government property, a security zone is prudent for this location.

#### Discussion of Comments and Changes

No public hearing was requested, and none was held. We received one comment on the proposed rule, which pointed out that two of the four geographical positions used in the NPRM to indicate the corner points of the 150-foot security zone around the Coast Guard Island Pier were incorrect. As a result, we have corrected the geographical positions to accurately reflect the 150-foot security zone in this final rule. This change is not considered significant since the general description of the security zone was correct in the NPRM and has not been changed.

#### 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).

Although this regulation restricts access to the zone, the effect of this regulation is not significant because: (i) The zone encompasses only a small portion of the waterway; (ii) the zone does not encroach into the charted channel; (iii) vessels are able to pass safely around the zone; and (iv) vessels will be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the security zone is the minimum necessary to provide adequate protection for Coast Guard Cutters, their crews, other vessels operating in the vicinity, adjoining areas and the public. The entities most likely to be affected are tug and barge companies transiting the Oakland Estuary 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 for several reasons: The zone does not extend into the charted channel, vessel traffic can pass safely around the area, and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public would be advised of this security zone via public notice to mariners.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 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 1–800–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 might 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.

## 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 draft "Categorical Exclusion Determination" (CED) will be available in the docket where located under **ADDRESSES**.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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 § 165.1190 to read as follows:

### § 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.

(a) *Location.* The following area is a security zone: all navigable waters of the Oakland Estuary, California, from the surface to the sea floor, 150 feet into the Oakland Estuary surrounding the Coast Guard Island Pier. The perimeter of the security zone commences at a point on land approximately 150 feet north of the northern end of the Coast Guard Island Pier at latitude 37°46'53.6" N and longitude 122°15'06.1" W; thence out to the edge of the charted channel at latitude 37°46'52.3" N and longitude 122°15'07.9" W; thence along the edge of the charted channel to latitude 37°46'42.2" N and longitude 122°14'50.5" W; thence to a point on land approximately 150 feet south of the southern end of the Coast Guard Island Pier at latitude 37°46'44.8" N and longitude 122°14'48.8" W; thence along the shoreline back to the beginning point, latitude 37°46'53.6" N and longitude 122°15'06.1" W.

(b) *Regulations.* (1) Under § 165.33, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the 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.

Dated: May 5, 2004.

**Gerald M. Swanson,**

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

[FR Doc. 04-12825 Filed 6-4-04; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 295-0441a; FRL-7667-8]

### Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Ventura County Air Pollution Control District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). The GBUAPCD revisions concern the emission of particulate matter (PM-10) from open fires and incinerator burning. The VCAPCD revisions concern the emission of particulate matter (PM-10) from open burning. We are approving local rules that administer regulations and regulate emission sources under the Clean Air Act as amended (CAA or the Act).

**DATES:** This rule is effective on August 6, 2004 without further notice, unless EPA receives adverse comments by July 7, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSDs at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

Ventura County Air Pollution Control District, 669 Country Square Drive, Ventura, CA 93003.