

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: Temporary final rule.

SUMMARY: The Coast Guard is revising the enforcement period of the 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: This amendment to § 165.T11-079 is effective from June 27, 2003 to 1 a.m. (PDT) on September 1, 2004. Section 165T11-079, as amended, expires September 1, 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 the docket [COTP San Francisco Bay 03-004] and are available for inspection or copying at Coast Guard 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 Diana J. Cranston, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 13, 2003, we published a temporary final rule (TFR) entitled Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California in the **Federal Register** (68 FR 25503), which was preceded by a notice of proposed rulemaking (NPRM), which was published in the **Federal Register** (68 FR 13244) on March 19, 2003 which afforded the public a comment period.

This rule has been in effect since 1 a.m. (PDT) May 1, 2003 and will expire at 1 a.m. (PDT) September 1, 2004. The enforcement period for the safety zone for the first phase of this project was published as commencing on May 1, 2003, and lasting for 2 months, to expire at 1 a.m. June 28, 2003. Due to project delays, the safety zone for the first phase of this project will now last for a 3-month period, vice a 2-month period, expiring on July 28, 2003. The second phase of this project remains as previously published, commencing April 1, 2004, lasting for a 5-month period. Both periods will be enforced 24 hours a day.

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**. The construction delays to this project were unforeseeable and not realized until the final 30-day phase of this 2-month project, thus not allowing enough time for this rule to be published a full 30 days prior to making this rule effective. Accordingly, since timely rehabilitation to the bridge (which is discussed in the Background and Purpose section) is crucial to the safety of this bridge, the channel closure must be extended for another 4-week period, starting June 29, 2003, which is less than 30 days after the publication of this rule.

Background and Purpose

The San Francisco Department of Public Works requested 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) Reinitiate light rail service across the bridge.

The first phase of this project, which began May 1, 2003, will entail the removal of the lift span and will now take approximately 3 months to complete vice the previously published 2 months. 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 delays or deferrals in 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 1 to March 31 and noise constraint in the water for steelhead from December 1 to June 1. 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. Those entities that will be affected by this one-month extension have been notified and concur with this enforcement period extension.

This temporary safety zone in the navigable waters of Mission Creek surrounding the construction site of the Fourth Street Bridge will be enforced during the course of a 3-month period, which started on May 1, 2003 and again for a 5-month period, starting April 1, 2004. Both periods will be enforced 24 hours a day.

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 safety zone does restrict boating traffic past the fourth street bridge, the effect of this regulation will not be significant as this waterway is very small with limited boating traffic.

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.

This safety zone will not have a significant impact on a substantial number of small entities for the following reasons. Although the channel

closure will restrict water access to a small number of boats, including houseboats who have moorings in Mission Creek Harbor, the channel closure will not impact land access to these houseboats during the bridge closures. The City of San Francisco, Department of Public Works and the Port of San Francisco have been in close consultation with the Mission Creek Harbor Association to assist boat owners affected by this project. As a result, the Mission Creek Harbor Association has a lease agreement with the Port of San Francisco for both houseboats and pleasure boats to moor outside of the affected closure area for the duration of the first channel closure that commences on May 1, 2003. Payment of all leases has been extended for one month, to coincide with the new expiration date of July 28, 2003. A similar resolution has been met for the second closure that is scheduled to commence on April 1, 2004.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 rule 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 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 safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket 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 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. In § 165.T11-079, revise paragraph (b)(2) to read as follows:

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

* * * * *

(b) * * *

(2) The zone in paragraph (a) of this section will be enforced from 1 a.m. (PDT) on May 1, 2003, to 1 a.m. (PDT) on July 28, 2003, and from 1 a.m. (PST) on April 1, 2004 to 1 a.m. (PDT) on September 1, 2004.

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Dated: June 27, 2003.
Gerald M. Swanson,
Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.
[FR Doc. 03-17370 Filed 7-8-03; 8:45 am]
BILLING CODE 4910-15-U

POSTAL SERVICE

39 CFR Part 111

Changes to the Domestic Mail Manual to Implement Customized MarketMail™

AGENCY: Postal Service.
ACTION: Final rule.

SUMMARY: This final rule sets forth the *Domestic Mail Manual* (DMM) standards that the Postal Service adopted to implement the Customized MarketMail™ classification changes, as established by the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Approving Stipulation and Agreement on Customized Market Mail Minor Classification Changes, Docket No. MC2003-1. In their decision, the Governors approved the Commission's recommendations, adopting recommended classification changes.

Customized MarketMail (CMM) represents a significant innovation for Standard Mail advertisers who want to target a specific audience with highly individualized mailpiece designs, including nonrectangular-shaped and multidimensional mailpieces such as cutouts of houses, automobiles, power boats, or wearing apparel. More creative designs could encourage greater customer interest and response rates to promotions, advertising, fund-raising campaigns, or other types of communications.

Before this service was introduced, mailing standards required that any mailpiece that was ¼ inch thick or less could not be mailed if that piece was not rectangular. This exclusion of nonrectangular letter-size mail and, in some cases, nonrectangular flat-size mail, reduced the available options for businesses and organizations wishing to reach existing or potential customers through advertising messages and designs, including the shape of the mailpiece. CMM will overcome this previous restraint.

EFFECTIVE DATE: This final rule takes effect at 12:01 a.m. on Sunday, August 10, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Berger, 703-292-3645, Mailing Standards, Postal Service Headquarters;

or Garry A. Rodriguez, 212-613-8748, New York Rates and Classification Service Center.

SUPPLEMENTARY INFORMATION:

On March 14, 2003, the United States Postal Service, in conformance with section 3623 of the Postal Reorganization Act (39 U.S.C. 101 *et seq.*), filed a request for a recommended decision by the Postal Rate Commission (PRC) on the establishment of Customized MarketMail as a minor classification change. The PRC designated this filing as Docket No. MC2003-1.

On June 6, 2003, pursuant to 39 U.S.C. 3624, the PRC issued to the Governors of the Postal Service its Opinion and Recommended Decision Approving Stipulation and Agreement on Customized Market Mail Minor Classification Changes, Docket No. MC2003-1. The PRC recommended that the Postal Service proposal for Customized MarketMail be established as a permanent classification.

On June 27, 2003, the Governors of the Postal Service approved the recommended decision and the Board of Governors established an implementation date of August 10, 2003, on which the approved classifications for Customized MarketMail take effect. This final rule contains the DMM standards adopted by the Postal Service to implement the decision of the Governors.

The Postal Service has therefore determined to issue these standards as published in the proposed rule, with minor modifications, as issued on May 21, 2003, in the **Federal Register** (68 FR 27760-27767). In that proposed rule, the Postal Service requested comments from the public and the mailing industry.

In order to simplify further the requirements for CMM, the Postal Service has initiated the following modifications or clarifications to the proposed rule:

- Addition of Postal Service flat trays as a container option.
- Addition of three distinct content identifier numbers for CMM prepared in Postal Service containers (letter trays, flat trays, and sacks), including the required "MAN" to ensure the mail is manually handled.
- Addition of a mailing standard requiring the submission of a sample CMM piece along with an extra copy of the completed postage statement corresponding to the CMM mailing at the time of mailing.

Comments

The Postal Service received comments from four distinct entities: a mailing association, a printing and graphics