

does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written 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), Reporting and recordkeeping requirements, 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. 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 § 165.920 to read as follows:

#### § 165.920 Regulated Navigation Area: USCG Station Port Huron, Port Huron, MI, Lake Huron.

(a) *Regulated Navigation Area.* A regulated navigation area is established in Lake Huron encompassed by a line connecting the following points: starting at the northwest corner at 43°00.4' N, 082°25.327' W; then east to 43°00.4' N, 082°25.238' W; then south to 43°00.3' N, 082°25.238' W; then west to 43°00.3' N, 082°25.327' W; then following the shoreline north back to the point of origin (NAD 83).

(b) *Special regulations.* (1) No vessel may fish, anchor, or moor within the RNA without obtaining the advanced approval of the Captain of the Port (COTP) Detroit. COTP Detroit can be reached by telephone at (313) 568-9580, or by writing to: MSO Detroit, 110 Mt. Elliot Ave., Detroit MI 48207-4380.

(2) Vessels not engaging in fishing, anchoring or mooring may transit the RNA.

Dated: December 18, 2003.

**Ronald F. Silva,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 04-913 Filed 1-14-04; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-009]

RIN 1625-AA00

#### Security Zones; San Francisco Bay, San Francisco, CA and Oakland CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These security zones are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Entry into these security zones would be prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before March 15, 2004.

**ADDRESSES:** You may mail comments and related material to the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501. The Waterways Branch of Coast Guard Marine Safety Office San Francisco Bay 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 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 Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (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 03-009), 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.

#### 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 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

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 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.

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.

On September 21, 2001, we issued a temporary final rule under docket COTP San Francisco Bay 01-009, and published that rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). That rule (codified as 33 CFR 165.T11-095) established a security zone

extending 1,800 yards seaward from the Oakland airport shoreline and a security zone extending 2,000 yards seaward from the San Francisco airport shoreline. Upon further reflection, and after discussion with airport officials and members of the public, we issued a new temporary rule in title 33 of the Code of Federal Regulations. That rule (67 FR 5482, Feb. 6, 2002, codified as 33 CFR 165.T11-097) reduced the size of the security zones to 1,000 yards seaward from both the Oakland and San Francisco airport shorelines.

We received several written comments about the 1,000-yard security zones established by that rule (33 CFR 165.T11-097). Virtually all of those comments urged a reduction in size of the security zones in order to allow increased public access to San Francisco Bay for fishing, windsurfing and similar uses. As a result, we issued a new temporary rule (67 FR 44566, July 3, 2002) that further reduced the size of the security zones to 200 yards seaward from both the Oakland and San Francisco airport shorelines. That rule (codified as 33 CFR 165.T11-086) expired on December 21, 2002.

Since the time that the security zones were allowed to expire, there have been several security incursions involving personnel gaining access to the airports from boats. In addition, the Department of Homeland Security in consultation with the Homeland Security Council, recently made the decision to raise the national threat level from an Elevated to High risk of terrorist attack based on intelligence indicating that Al-Qaida is poised to launch terrorist attacks against U.S. interests. To address these security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against one of these airports would have on the public interest, the Coast Guard proposes to establish permanent security zones extending approximately 200 yards seaward around the Oakland and San Francisco airports. These security zones are necessary to provide for the safety of individuals and facilities within and adjacent to the San Francisco and Oakland airports and to ensure that the airports are not used as targets of, or platforms for, terrorist attacks. Due to heightened security concerns, and the catastrophic impact a terrorist attack on one of these airports would have on the public, the transportation system, and surrounding areas and communities, security zones are prudent for these airports.

#### Discussion of Proposed Rule

In this proposed rule, the Coast Guard would establish two security zones

within the navigable waters of San Francisco Bay extending approximately 200 yards seaward from the shorelines of the Oakland International Airport and the San Francisco International Airport. The two security zones are designed to provide increased security for the airports, while minimizing the impact to vessel traffic, fishing, windsurfing and other activities upon San Francisco Bay. Two hundred yards from the shoreline is estimated to be an adequate zone size to provide increased security for each airport by providing a standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel. Buoys would be installed to indicate the perimeter of the security zone at each airport. This proposed 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.

Vessels or persons violating this proposed security zone would 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 \$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. 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 would enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

#### Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the zones, the effect of this regulation would not be significant because: (i) These security zones are established in an area of the San Francisco Bay that is seldom used, (ii) the zones would encompass only a small portion of the waterway; (iii) vessels would be 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 proposed security zones is the minimum necessary to provide adequate protection for the San Francisco International Airport and the Oakland International Airport. The entities most likely to be affected are small recreational vessel traffic engaged in fishing or sightseeing activities.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities for several reasons: These security zones would not occupy an area of the San Francisco Bay that is frequently transited, small vessel traffic would be able to 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. Buoys would be installed to mark the perimeter of the security zone at each airport and small entities and the maritime public would be advised of these security zones via public notice to mariners.

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 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that we can better evaluate its effects on them and participate in the rulemaking. If the proposed 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 under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this proposed rule.

#### Collection of Information

This proposed rule would call 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 proposed 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 proposed rule would 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 rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### 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. 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 proposed 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**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### 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. 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 § 165.1192 to read as follows:

#### § 165.1192 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

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

(1) *San Francisco International Airport Security Zone.* This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	Longitude
37°36'19" N	122°22'36" W
37°36'45" N	122°22'18" W
37°36'26" N	122°21'30" W
37°36'31" N	122°21'21" W
37°36'17" N	122°20'45" W
37°36'37" N	122°20'40" W
37°36'50" N	122°21'08" W
37°37'00" N	122°21'12" W
37°37'21" N	122°21'53" W
37°37'39" N	122°21'44" W
37°37'56" N	122°21'51" W
37°37'50" N	122°22'20" W
37°38'25" N	122°22'54" W
37°38'25" N	122°23'02" W

and along the shoreline back to the beginning point.

(2) *Oakland International Airport Security Zone.* This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from

the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	Longitude
37°43'35" N	122°15'00" W
37°43'40" N	122°15'05" W
37°43'34" N	122°15'12" W
37°43'24" N	122°15'11" W
37°41'54" N	122°13'05" W
37°41'51" N	122°12'48" W
37°41'53" N	122°12'44" W
37°41'35" N	122°12'18" W
37°41'46" N	122°12'08" W
37°42'03" N	122°12'34" W
37°42'08" N	122°12'32" W
37°42'35" N	122°12'30" W
37°42'40" N	122°12'06" W

and along the shoreline back to the beginning point.

(b) *Regulations.* (1) Under § 165.33, entering, transiting through, or anchoring 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 or her 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.

Dated: January 5, 2004.

**Gerald M. Swanson,**

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

[FR Doc. 04-914 Filed 1-14-04; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 289-0417b; FRL-7600-8]

#### Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). The revision concerns the emission of volatile organic compounds (VOC) from the transfer of gasoline at dispensing stations. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by February 17, 2004.

**ADDRESSES:** Send 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 a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20460.  
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.  
Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the approval of local MBUAPCD Rule 1002. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 2, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 04-837 Filed 1-14-04; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Region 2 Docket No. NY66-271b; FRL-7610-6]

#### Approval and Promulgation of State Plans for Designated Facilities; New York

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Plan submitted by New York implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines, as promulgated by EPA. The State Plan establishes performance standards for existing MSW landfills located in New York State and provides for the implementation and enforcement of those standards, which will reduce the designated pollutants. The State Plan revision consists of moving the federally approved MSW requirements from Subpart 360-2.21 of title 6 of the New York Codes, Rules and Regulations (NYCRR) to part 208 of title 6 NYCRR. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving New York's State Plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further