

**§ 22.4 [Corrected]**

■ 5. On page 46343, in the first column, in the first sentence of the rule text for § 22.4(a), change the term “the active investigation of” to “an active investigation”.

**§ 23.3 [Corrected]**

■ 6. On page 46343, in the second column, in the first sentence of the rule text for § 23.3(a), change the term “the active investigation of” to “an active investigation”.

**§ 33.3 [Corrected]**

■ 7. On page 46343, in the third column, after the rule texts for § 33.3, remove the five asterisks.

Dated: August 16, 2005.

**Robert M. Friend,**

*Acting Deputy Assistant Secretary.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 05-006]

RIN 1625-AA87

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising the perimeter of the existing security zone that extends approximately 50 yards into the navigable waters of the Oakland Estuary, Alameda, California, around the United States Coast Guard Island Pier to coincide with the perimeter of a floating security barrier. This action is necessary to provide continued security for 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 starting at 12:01 a.m. on September 21, 2005.

**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 05-006 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 Ian Callander, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-3401.

**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 security zone extending approximately 50 yards around the Coast Guard Island Pier in the navigable waters of the Oakland Estuary in Alameda, California. We received one letter commenting on the proposed rule. No public hearing was requested, and none was held. On June 7, 2004, we published a final rule (codified as 33 CFR 165.1190) entitled “Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA” in the **Federal Register** (69 FR 31737) that established a security zone extending approximately 50 yards around the Coast Guard Island Pier in the navigable waters of the Oakland Estuary in Alameda, California.

Since that time, the Coast Guard determined that a floating security barrier should also be installed to provide an added level of security for the Coast Guard Cutters that moor at the Coast Guard Island Pier. Because the navigational channel is less than 50 yards from the two ends of the Coast Guard Island Pier, and in order to provide approximately 50 yards of maneuvering space for the cutters along the entire length of the pier, the barrier needed to extend into the navigational channel approximately 10 to 20 yards at each end. Since the previously published security zone did not extend into the navigational channel, we published another NPRM entitled “Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA” in the **Federal Register** on May 9, 2005 (70 FR 24344) proposing to revise the perimeter of the existing security zone around the Coast Guard Island pier to mirror the perimeter of the floating security barrier. We received two comments on the proposed rule. No public hearing was requested, and none was held.

Vessels or persons violating this section are 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 security 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**

In its effort to thwart potential 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 Espionage 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, the Coast Guard is revising the perimeter of the existing security zone around the Coast Guard Island pier to mirror the perimeter of the floating security barrier. The need for the security zone still exists 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.

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 rule prohibits the 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 one of these vessels would have, having a security zone around the Coast Guard Island Pier remains a prudent and necessary action.

#### Discussion of Comments and Changes

We received two comments on the proposed rule. No public hearing was requested, and none was held. The first comment we received noted that the two geographical positions provided in the NPRM that were intended to be located on the shore of Coast Guard Island actually plotted slightly offshore from Coast Guard Island. The two positions have been corrected in this final rule. The second comment we received requested that we use yards as the unit of measurement to describe the security zone instead of feet in order to be consistent with other security zones in the San Francisco Bay Area. As a result, we have used yards as the unit of measurement to describe the security zone in this final rule. Because neither of these two changes have a substantive impact on the regulation, we feel that making these changes does not warrant an extension to the public comment period provided by the NPRM.

#### 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 rule restricts access to the waters encompassed by the security zone, the effects of this rule are not significant for the following reasons: (i) Vessel traffic is able to pass safely around the area, (ii) vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities, (iii) the perimeter of the security zone only extends 10 to 20 yards into the approximately 170-yard wide navigational channel, and (iv) this security zone is only slightly larger than the Coast Guard Island security zone that has been in place since July 7, 2004.

#### 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. The small entities most likely to be affected are tug and barge companies transiting the Oakland Estuary. This regulation will not have a significant economic impact on these small entities for several reasons: (i) Vessel traffic is able to pass safely around the area, (ii) vessels engaged in commercial towing have ample space outside of the security zone to engage in towing activities, (iii) the perimeter of the security zone only extends approximately 10 to 20 yards into the approximately 170-yard wide navigational channel, and (iv) this security zone is only slightly larger than the Coast Guard Island security zone that has been in place since July 7, 2004. Small entities and the maritime public would be advised of this security zone via broadcast notice to mariners, and/or local 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.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 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 it establishes a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 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. Revise § 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, approximately 50 yards into the Oakland Estuary surrounding the Coast Guard Island Pier. The perimeter of the security zone follows the same perimeter as the floating security barrier installed around the Coast Guard Island pier. The perimeter of the security barrier is located along the following coordinates: commencing at a point on land approximately 50 yards northwest of the northwestern end of the Coast Guard Island Pier at latitude 37°46'53.60" N and longitude 122°15'06.10" W; thence to the edge of the navigable channel at latitude 37°46'51.83" N and longitude 122°15'07.47" W; thence to a position approximately 10 yards into the charted navigation channel at latitude 37°46'51.27" N and longitude 122°15'07.22" W; thence closely paralleling the edge of the charted navigation channel to latitude 37°46'46.75" N and longitude 122°15'00.21" W; thence closely paralleling the edge of the charted navigation channel to a point approximately 20 yards into the charted navigation channel at latitude 37°46'42.36" N and longitude 122°14'51.55" W; thence to a point on land approximately 50 yards southeast of the southeastern end of the Coast Guard Island Pier at latitude 37°46'44.80" N and longitude 122°14'48.80" W; thence northwest along the shoreline back to the beginning point.

(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.

(c) *Enforcement.* The Captain of the Port will enforce this security zone and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: August 3, 2005.

**W.J. Uberti,**

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

[FR Doc. 05–16515 Filed 8–19–05; 8:45 am]

**BILLING CODE 4910–15–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R04–OAR–2004–NC–0005–200513, FRL–7956–8]

#### Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of North Carolina, through the Department of Environment and Natural Resources (DENR) on December 21, 2004, for the four Early Action Compact (EAC) areas in North Carolina: the Mountain, Unifour, Triad and Fayetteville areas (the North Carolina EAC Areas). The SIP revisions meet the requirements for the North Carolina EAC Areas to attain and maintain the 8-hour ozone national ambient air quality standard (the 8-hour ozone standard) as described in the EAC Protocol and related regulations. EPA is also now approving the photochemical modeling used by North Carolina to support the attainment and maintenance demonstration of the 8-hour ozone standard in the North Carolina EAC Areas.

In this action, EPA is not finalizing its proposed rulemaking to defer the effective date of the nonattainment designations for EAC areas. In a separate action, published on June 8, 2005, EPA proposed to defer the effective date of the nonattainment deferred designation for EAC areas until December 31, 2006 (69 FR 23858). EPA final action on the deferral is expected to be published before September 30, 2005.