

### 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. 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 and Department of Homeland Security Management Directive 5100.1, which guide 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 safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be 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. 1225, 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–105 to read as follows:

#### § 165.T11–105 Safety Zone: North San Diego Bay, CA.

(a) *Location.* The safety zone is comprised of a 150-yard radius around the anchored barge. The anchoring location is at the approximate position 32°42'309" N, 117°10'173" W (approximately 450 ft southwest of the North Embarcadero.)

(b) *Effective Period.* This safety zone will be in effect from 9 p.m. (local) through 10 p.m. (local) on the following dates: June 30, July 1, July 2, July 7, July 8, July 14, July 15, July 21, July 22, July 28, July 29, August 4, August 5, August 11, August 12, August 18, August 19, August 20, August 25, August 26, August 31, September 1, September 2, and September 3, 2006. The events are

scheduled to conclude no later than 10 p.m. (local). However, if displays conclude prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone 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 his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the U.S. Coast Guard Patrol Commander. The U.S. Coast Guard Patrol Commander may be contacted via VHF–FM Channel 16.

(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 can be comprised of 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. The Coast Guard may be assisted by other Federal, state, or local agencies.

Dated: June 26, 2006.

**C.V. Strangfeld,**

*Captain, U.S. Coast Guard, Captain of the Port.*

[FR Doc. E6–10999 Filed 7–12–06; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco 06–021]

RIN 1625–AA00

#### Safety Zone; BART Transbay Tube Seismic Upgrade; San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a moving temporary safety zone in the navigable waters of San Francisco Bay, California during vibro penetration testing for a seismic upgrade of the Bay Area Rapid Transit (BART) Transbay tube. The testing will require placement of a barge at test sites along

the BART Transbay tube. The safety zone will surround the barge and move with the barge as it conducts the tests at seven sites along the BART Transbay tube. This safety zone is necessary to protect persons and vessels from hazards, injury, and damage associated with the vibro penetration testing. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port San Francisco or his designated representative.

**DATES:** This rule is effective from June 26, 2006 through September 24, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP San Francisco 06-021 and are available for inspection or copying at the Waterways Safety Branch of Sector San Francisco, Yerba Buena Island, Bldg. 278, San Francisco, California, 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ensign Erin Bastick, U.S. Coast Guard Sector San Francisco, at (415) 556-2950 or Sector San Francisco 24 hour Command Center at (415) 399-3547.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The dates for the vibro penetration testing along the Transbay tube were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. Consequently, the testing would commence before the rulemaking process could be completed. Any delay in implementing this rule is contrary to the public interest since immediate action is necessary in order to protect the maritime public from the hazards associated with the vibro penetration testing.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The dates for the vibro penetration testing along the Transbay tube were not finalized and presented to the Coast Guard in time to publish this rule 30 days prior to its effective date. Consequently, the testing would commence before the rulemaking process could be completed. Delay in the effective date of this rule would expose the mariners and waterways users to undue hazards associated with the vibro penetration testing.

**Background and Purpose**

Bay Area Rapid Transit has contracted Hayward Baker, Soletanche, Traylor, A Joint Venture, to conduct BART marine demonstration tests in support of their earthquake safety efforts. They will be conducting vibro penetration tests for future seismic upgrade of the BART Transbay tube. The scope of work involves four primary activities carried out on the water. These activities include vibro penetration tests, vibro ground improvement, drilling, sampling and sonic borings.

The Joint Venture's work will involve outfitting the barge DOGBONE with a crane and vibratory densification equipment and locating it over the tube alignment to perform the ground improvement within the test areas. At times, there will be an additional barge lashed to the barge DOGBONE for material handling. Approximately ten 5-foot tall tripods with acoustic transponders will be deployed on the bay bottom to determine specific test locations along the BART Transbay. At each specified location, the crane-suspended vibrator will be lowered into the bay floor and then proceed to densify the granular backfill placed around the tubes shortly after they were originally placed into position.

**Discussion of Rule**

This safety zone will encompass the navigable waters from the surface to the sea floor, located in the San Francisco Bay, encompassing a circular safety zone with a 750-foot radius extending from the Crane Barge DOGBONE. The Barge DOGBONE will transit and conduct testing along the BART Transbay tube between two points: 37°47'50.97" N Latitude by 122°23'17.01" W Longitude at the western extreme and 37°48'25.65" N Latitude by 122°21'03.59" W Longitude on the eastern extreme. This area between the two points will be used to maneuver and anchor the Barge DOGBONE as it conducts the vibro penetration tests from June 26, 2006 through September 24, 2006. The BART Project manager coordinated the test locations with the local Bar Pilots and the Vessel Traffic Service to ensure the testing would result in minimum impact to vessel traffic. This moving safety zone around the Barge DOGBONE is necessary to protect persons and vessels from hazards, injury, and damage associated with the vibro penetration testing.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard

Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to both criminal and civil penalties.

**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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users have been contacted to ensure the closure will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities. Not only is the safety zone small in size, but there will be ample space to navigate around the safety zone as well.

**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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the San Francisco Bay from June 26, 2006 through September 24, 2006. Although this regulation prevents traffic from transiting a portion of San Francisco Bay during the testing, the effect of this regulation will not be significant because small vessels will be able to transit around the regulated area. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

Small entities and the maritime public will also be advised of this safety zone via public broadcast notice to

mariners. In addition, vessels will be able to pass through the zone on a case-by-case basis. Therefore, the economic impact of this waterway closure is not expected to be significant.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want 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 1-888-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 affect 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. 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 and Department of Homeland Security Management Directive 5100.1, which guide 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. Paragraph (34)(g) is applicable because this rule establishes a safety zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be 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; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11-110, to read as follows:

#### § 165.T11-110 Safety Zone; San Francisco Bay, California.

(a) *Location.* The following area is a safety zone: All navigable waters in the San Francisco Bay, from the surface to the sea floor, encompassed by a circle with a radius of 750-feet extending from and around the Crane Barge DOGBONE. This safety zone will move and continue to extend 750-feet from the Barge DOGBONE while it operates along the charted BART Transbay tube between the following two points: 37°47'50.97" N Latitude, by 122°23'17.01" W Longitude at the western extreme, and 37°48'25.65" N

Latitude by 122°21'03.59" W Longitude at the eastern extreme.

(b) *Effective Dates.* This rule is effective from June 26, 2006 through September 24, 2006. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone.

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

(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 can be comprise of 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.

The U.S. Coast Guard may be assisted in the patrol and enforcement of these two safety zones by local law enforcement as necessary.

Dated: June 23, 2006.

**W.J. Uberti,**

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

[FR Doc. E6-10980 Filed 7-12-06; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2005-VA-0015; FRL-8196-8]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; NSR in the Ozone Transport Region

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires major new and major modified sources of volatile organic compounds (VOCs) or nitrogen oxides (NO<sub>x</sub>) to meet certain nonattainment New Source Review (NSR) requirements if they are located (or are proposing to locate) in

Virginia's portion of the Ozone Transport Region (OTR). The intended effect of this action is the approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for NSR in the OTR.

**DATES:** *Effective Date:* This final rule is effective on August 14, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2005-VA-0015. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376 or by e-mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

On January 6, 2006 (71 FR 890), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of nonattainment NSR in the OTR. The formal SIP revision was submitted by Virginia on March 28, 2005. The applicable regulations requiring implementation of nonattainment NSR in the Virginia portion of the OTR were adopted by the Virginia State Air Pollution Control Board on September 29, 2004.

The Clean Air Act requires 13 states including the District of Columbia to submit revisions to their State Implementation Plans that will require major new and modified sources of VOCs or NO<sub>x</sub> to meet certain NSR requirements if they are located (or planning to locate) in the OTR. The OTR consists of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the Consolidated

Metropolitan Statistical Area that includes the District of Columbia and portions of Virginia.

The areas designated as in the Virginia portion of the OTR are as follows: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

#### II. Summary of SIP Revision

The Commonwealth of Virginia amended its regulations to clarify that areas located in the Virginia portion of the OTR must meet the requirements of Virginia Code Article 9 VAC 5 Chapter 80 (Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas) as if they were classified as moderate nonattainment for ozone, except that the threshold for major stationary sources of VOCs would be 50 tons instead of 100 tons. The changes that are approved in this SIP revision are those that identify and define the OTR locations in Virginia while providing direction to what State regulations sources will need to follow when they are either planning to locate in or are already located in the Virginia portion of the OTR. Changes were made to the State provisions at 9 VAC 5-80-2000, Applicability and 9 VAC 5-80-2010, Definitions.

Sources in the Virginia portion of the OTR are also required to meet offset requirements in 9 VAC 5-80-2120 B 2 for areas classified as moderate nonattainment for ozone. These provisions require all increases of VOC and/or NO<sub>x</sub> emissions attributable to the new or modified source to be offset with emission reductions elsewhere in the Virginia portion of the OTR at a ratio of 1.15 to 1.00.

This approved SIP revision amends the SIP to add new regulatory language indicating that sources in the Virginia portion of the OTR are subject to the requirements of 9 VAC 5-80-2000, et seq. regardless of the nonattainment status of the area where the source is located. This SIP revision also provides that sources located or planning to locate in areas within the OTR that are classified as "serious" or "severe" nonattainment areas are required to meet the respective emission thresholds listed within the State's definition of a "major stationary source" at 9 VAC 5-80-2010 C Section a (1) and (2) and the more restrictive offset requirements located in 9 VAC 5-80-2120 B 3 and B 4, respectively.