

publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

#### Comment Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2005-23375/Airspace Docket No. 05-ACE-35." The postcard will be date/time stamped and returned to the commenter.

#### Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Beatrice Municipal Airport, Beatrice, NE.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 if Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### **ACE NE E5 Beatrice, NE**

Beatrice Municipal Airport, NE  
(Lat. 40°18'05" N., long. 96°45'15" W.)  
Shaw NDB

(Lat. 40°15'54" N., long. 96°45'25" W.)  
That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Beatrice Municipal Airport and within 3.1 miles each side of the 185° bearing from the Shaw NDB extending from the 7.5-mile radius of the airport to 7 miles south of the Shaw NDB.

\* \* \* \* \*

Issued in Kansas City, MO, on December 19, 2005.

**Paul J. Sheridan,**

*Area Director, Western Flight Services Operations.*

[FR Doc. 06–80 Filed 1–4–06; 8:45 am]

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

**[COTP San Francisco Bay 05–011]**

**RIN 1625–AA00**

#### **Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard has established a 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 ongoing bridge construction activities scheduled to continue through September 1, 2006. The safety zone temporarily prohibits use of the Mission Creek Waterway surrounding the Fourth Street Bridge, unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 12:01 a.m. on January 1, 2006 to 11:59 p.m. on September 1, 2006. Comments and related material must reach the Coast Guard on or before March 1, 2006.

**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 05–011 and are available for inspection or copying at the Waterways Safety Branch of Sector San Francisco, 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 Eric Ramos, U.S. Coast Guard Sector San Francisco, at (510) 437–2770.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B),

the Coast Guard finds that good cause exists for not publishing an NPRM. A delay in the effective date of this rule would expose mariners to undue hazards associated with bridge construction operations. For the same reason, 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**. Although the Coast Guard has good cause to issue this effective temporary rule without first publishing a proposed rule, you are invited to submit comments and related material regarding this rule on or before March 1, 2006. We may change the temporary final rule based on your comments.

### Background and Purpose

The San Francisco Department of Public Works requested a temporary closure of the Mission Creek waterway 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. The three objectives of the rehabilitation project are to: (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) reinstate light rail service across the bridge. The Federal Highway Administration, the State of California and the City of San Francisco are funding the Fourth Street Bridge Retrofit Project.

The first phase of this project included the removal of the lift span, and took place between May 1 and July 28, 2003. During that period, the channel was closed at the Fourth Street Bridge to boating traffic by a temporary final rule that was published in the **Federal Register** on May 13, 2003 (68 FR 25500) and a subsequent change in effective period temporary final rule that was published on July 9, 2003 (68 FR 40772). Those two rules established a safety zone that extended 100 yards on either side of the Fourth Street Bridge. The second phase of the construction project included rebuilding the north and south approaches and the new counterweight and its enclosing pit; but did not require that the waterway be

closed to boating traffic. A temporary final rule was published in the **Federal Register** on the March 31, 2005 (70 FR 16413) which established a safety zone that extended 100 yards on either side of the Fourth Street Bridge during the final phase of construction. However, the final phase has been extended due to construction delays.

The safety zone established in this particular rule is for the final stages of construction, which includes replacing the lift span and aligning the bridge to accept the light rail track system. Due to unforeseen conditions which have delayed the complicated installation of the bridge counterweights, mechanical and electrical systems, miscellaneous connections and adjustments, and the completion of the final balancing and alignment of the bridge to accept the light rail tracks system, the completion date has been extended to September 1, 2006. A safety zone of 100 yards on either side of the Fourth Street Bridge is needed during this period to protect boating traffic public from the dangers posed by the construction operations and to allow the construction operations to be completed.

There are two major environmental issues that affect the scheduling of construction in the channel, namely the annual pacific herring spawning season that runs from December 1 to March 31, and noise constraints 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 impacts on these species.

The Fourth Street Bridge Project is related to 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 many 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 addition, the City of San Francisco advised the Coast Guard Captain of the Port in January of 2003 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 area boaters and other involved entities.

### Discussion of the Rule

The Coast Guard has established a safety zone that consists of a portion of the navigable waters located at the Fourth Street Bridge in the Mission Creek Waterway in China Basin, San Francisco, California. This safety zone is to affect a waterway closure during periods of reconstruction of the Fourth Street Bridge and would be effective 24 hours a day between January 1, 2006 and September 1, 2006.

This safety zone is necessary to protect persons and vessels from hazards, injury and damage associated with bridge construction activities. No vessel or person may come within 100 yards of either side of the bridge, or pass beneath the bridge during construction.

This safety zone encompasses the navigable waters, from the surface to the bottom, within two lines; one line drawn from a point on the north shore of Mission Creek extending southeast to a point on the opposite shore, 100 yards west of the bridge, and the other line drawn from a point on the north shore of Mission Creek extending southeast to a point on the opposite shore, 100 yards east of the bridge.

Vessels and people may be allowed to enter an established safety zone on a case-by-case basis with authorization from the Captain of the Port or a designated representative thereof. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in this safety zone.

Coast Guard personnel will enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and enforcement of the regulation.

### 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 safety zone, the effect of this rule is not significant because: (i) Owners of boats located within Mission Creek have been advised of the planned waterway closures at several Mission Bay Citizen Advisory Committee meetings, (ii) the San Francisco Department of Public Works and the Port of San Francisco have consulted with the Mission Creek Harbor Association to address the impacts of temporarily closing the channel to local boaters, (iii) the Department of Public works has made arrangements to accommodate the requests of owners that have asked to temporarily moor their house boats or pleasure boats at the head of the channel, (iv) the channel closure will not impact land access to the houseboats west of the bridge during the waterway closure and (v) the zone is not permanent.

The size of the zone is the minimum necessary to provide adequate protection for the boating public and an adequate distance to ensure vessel wakes to not interfere with construction operations. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The effect of this rule on small entities is not expected to be significant because: (i) Owners of boats located within Mission Creek have been advised of the planned waterway closures at several Mission Bay Citizen Advisory Committee meetings, (ii) the San Francisco Department of Public Works and the Port of San Francisco have consulted with the Mission Creek Harbor Association to address the impacts of temporarily closing the channel to local boaters, (iii) the Department of Public works has made arrangements to accommodate the requests of owners that have asked to temporarily moor their house boats or

pleasure boats at the head of the channel, (iv) the channel closure will not impact land access to the houseboats west of the bridge during the waterway closure and (v) the zone is not permanent. However, a small number of sailboats that moor in the harbor may be impacted. Small entities and the maritime public will be advised of this safety zone via public notice to mariners.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 1–800–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 does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This rule does 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 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 M16475.1D, 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 safety zone.

A draft “Environmental Analysis Check List” and a draft “Categorical Exclusion Determination” (CED) 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, 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.T11–056 to read as follows:

#### § 165.T11–056 Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California.

(a) *Location.* One hundred yards to either water-side of the Fourth Street Bridge, encompassing the navigable waters, from the surface to the sea floor,

bounded by two lines; one line drawn from a point on the north shore of Mission Creek [37°46′29″ N, 122°23′36″ W] extending southeast to a point on the opposite shore [37°46′28″ N, 122°23′34″ W], and the other line drawn from a point on the north shore of Mission Creek [37°46′34″ N, 122°23′30″ W] extending southeast to a point on the opposite shore [37°46′33″ N, 122°23′28″ W] [Datum: NAD 83].

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

(c) *Effective period.* The safety zone will be in effect from 12:01 a.m. on January 1, 2006, to 11:59 p.m. on September 1, 2006. If the need for this safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

(d) *Enforcement.* The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, or municipal agency to assist in the enforcement of the regulation. 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 comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, federal, state, and local 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.

Dated: December 21, 2005.

**William J. Uberti,**

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

[FR Doc. 06–83 Filed 1–4–06; 8:45 am]

**BILLING CODE 4910–15–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[EPA–R05–OAR–2005–IN–0010; FRL–8019–5]

#### Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Vigo County Nonattainment Area to Attainment of the 8-Hour Ozone Standard

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

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the Vigo County 8-hour ozone nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is approving a request from the State of Indiana, submitted on July 5, 2005 and supplemented on October 20, 2005 and November 4, 2005, to redesignate Vigo County from nonattainment to attainment for the 8-hour ozone NAAQS. EPA’s approval of the redesignation request is based on the determination that Vigo County and the State of Indiana have met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA), including the determination that Vigo County has attained the 8-hour ozone standard. In conjunction with this approval, EPA is approving the State’s plan for maintaining the 8-hour ozone NAAQS in Vigo County through 2015 as a revision to the Indiana State Implementation Plan (SIP). EPA also finds as adequate and approves the 2015 Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) Motor Vehicle Emission Budgets (MVEBs) for this area. **DATES:** This rule is effective on February 6, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2005–IN–0010. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, 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 at the Environmental Protection Agency, Region 5, Air and Radiation