

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 would 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, 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 (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

- 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

- 2. Add § 117.537 to read as follows:

#### § 117.537 Townsend Gut.

The draw of the Southport (SR27) Bridge, at mile 0.7, across Townsend

Gut between Boothbay Harbor and Southport, Maine shall open on signal; except that, from April 29 through September 30, between 6 a.m. and 6 p.m., the draw shall open on signal on the hour and half hour only, after an opening request is given.

Dated: July 31, 2006.

**Timothy S. Sullivan,**

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

[FR Doc. E6–13384 Filed 8–15–06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 06–031]

RIN 1625–AA00

#### Safety Zone; Old Mormon Slough Sediment Contamination—McCormick and Baxter Superfund Site; Stockton, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of Stockton Deep Water Channel, in the vicinity of the Old Mormon Slough. This safety zone is necessary to protect persons and vessels, which might otherwise transit near the work site, from the hazards associated with the work. 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 or his designated representative.

**DATES:** This rule is effective from July 24, 2006 through October 31, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP 06–031 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 site remediation of the Old Mormon Slough were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the capping of the Slough 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 remediation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The dates for the site remediation of the Old Mormon Slough were not finalized and presented to the Coast Guard in time to publish this rule 30 days prior to its effective date. As such, the capping of the Slough 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 remediation and would therefore be contrary to the public interest.

#### **Background and Purpose**

This safety zone is necessary to cap a superfund site, located in the Stockton Deep Water Channel, within the Old Mormon Slough. The Army Corps of Engineers has contracted Montgomery Watson, with J.E. McAmis Inc. being the subcontractor, to implement Phase II of the selected remedy for contaminated sediment in the Old Mormon Slough. Phase II consists of placing a cap of clean sand on the contaminated portion of the Slough. During this process it is imperative that unauthorized persons or vessels remain out of the safety zone for safety reasons in addition to ensuring proper completion of the project. This will enable the EPA to proceed with plans of this Superfund site and contain the contaminated sediment.

#### **Discussion of Rule**

This safety zone will encompass the navigable waters from the surface to the sea floor, located in the Stockton Deep Water Channel, within the Old Mormon Slough, encompassing all waters East of 37°57'01.25" N. Latitude by 121°18'48.03" W. Longitude. Within the waters of this safety zone, J.E. McAmis, Inc. will be covering the contaminated bottom of the Old Mormon Slough with two feet of sand. To control turbidity, a primary and a local silt curtain will be installed. The primary silt curtain will be installed at 37°57'01.25" N. Latitude

by 121°18'48.03" W. Longitude, creating the safety zones outer boundary. JEM intends to place one loaded barge of sand (approximately 750/c.y.) each day. The silt curtains will be opened and closed each day when a loaded barge is switched with an empty barge. After completion of sand placement, the primary silt curtain will be removed. A permanent log boom will be installed in the same location along with Type 2, Type 3A and Type 3B warning signs. This safety zone is necessary to protect persons and property from the hazards associated with the work.

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.

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.

#### **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. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, or anchor in the waters affected by this safety zone. This safety

zone will not have a significant economic impact on a substantial number of small entities because vessels engaged in recreational activities, sightseeing and fishing have ample space outside of the safety zone to engage in these activities.

Small entities and the maritime public will also be advised of this safety zone via public broadcast notice to mariners. 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 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 Ensign Erin Bastick, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco at (415) 556–2950 extension 142, or the 24 hour Command Center at (415) 399–3547.

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 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–127, to read as follows:

#### **§ 165.T11–127 Safety Zone; Old Mormon Slough Sediment Contamination—McCormick and Baxter Superfund Site; Stockton, California.**

(a) *Location.* This safety zone will encompass the navigable waters from the surface to the sea floor, located in the Stockton Deep Water Channel, within the Old Mormon Slough, encompassing all waters East of 37°57'01.25"N Latitude by 121°18'48.03"W Longitude. Within the waters of this safety zone, the contaminated bottom of the Old Mormon Slough will be covered with two feet of sand. To control turbidity, a primary and a local silt curtain will be installed. The primary silt curtain will be installed at 37°57'01.25"N Latitude by 121°18'48.03"W Longitude, creating the safety zones outer boundary.

(b) *Effective Dates.* This rule is effective from July 24, 2006 through October 31, 2006.

(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 on-scene patrol personnel.

(d) *Enforcement.* (1) 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.

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

(3) 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.

Dated: July 21, 2006.

**David Swatland,**

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

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