

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39-9463 (60 FR 66488, December 22, 1995).

95-26-05 R1 Robinson Helicopter

Company: Amendment 39-13704, Docket No. 95-SW-30-AD. Rescinds AD 95-26-05, Amendment 39-9463.

Applicability: Model R44 helicopters, certificated in any category.

This rescission is effective July 6, 2004.

Issued in Fort Worth, Texas, on June 24, 2004.

Kim Smith,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04-15129 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2004-17427; Airspace Docket No. 04-ACE-27]

Modification of Class E Airspace; Oshkosh, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Oshkosh, NE.

DATES: *Effective Date:* 0901 UTC, August 5, 2004.

FOR FURTHER INFORMATION CONTACT:

Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a

request for comments in the **Federal Register** on May 11, 2004 (69 FR 26029) and subsequently published corrections to the direct final rule on May 25, 2004 (69 FR 29653) and June 18, 2004 (69 FR 34054). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 5, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on June 21, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04-15249 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[COTP Savannah-04-066]

RIN 1625-AA00

Safety Zone; Shelter Cove, Hilton Head Island, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone extending a radius of 1,000 feet around the fireworks barge located in Shelter Cove, Hilton Head Island, SC. This regulation is necessary to protect life and property on the navigable waters of Broad Creek due to possible dangers associated with fireworks. No vessel may enter the safety zone without the permission of the Captain of the Port Savannah.

DATES: This rule is effective from 8 p.m. June 15, 2004, until 10 p.m. August 24, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Savannah-04-066] and are available for inspection or copying at Coast Guard Marine Safety Office Savannah, 100 W. Oglethorpe Ave., Savannah, GA 31401

between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Anthony J. Quirino, Coast Guard Marine Safety Office Savannah, 912-652-4353 Ext 235.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public.

For the same reasons, 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**.

Background and Purpose

The temporary safety zone will be in effect and enforced in an area extending a radius of 1,000 feet around the barge located in Shelter Cove, Hilton Head Island, SC (32°10'55" N, 080°44' W). The temporary safety zone will be enforced from 8 p.m. through 10 p.m. each Tuesday beginning on June 8, 2004 through August 24, 2004, and from 8 p.m. to 10 p.m. July 4, 2004. Marine traffic will not be permitted to enter the safety zone without the permission of the Captain of the Port Savannah. Any concerned traffic can contact the representative of the Captain of the Port on board U.S. Coast Guard Auxiliary vessel, which will be on scene throughout the closure. Traffic needing permission to pass through this safety zone can contact the representative for the COTP on VHF-FM channel 16 or via phone at (912) 652-4181.

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) because marine traffic should be able to safely transit around the safety zone and may be allowed to enter the

zone with the permission of the COTP or his representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 because small entities and marine traffic should be able to safely transit around the safety zone and may be allowed to enter the zone with the permission of the COTP.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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 this rule 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. Although 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 safety that may disproportionately affect children.

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. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are not required for this rule.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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 temporary § 165.T07–108 to read as follows:

§ 165.T07–108 Shelter Cove, Hilton Head, SC.

(a) *Location:* The Coast Guard is establishing a temporary safety zone extending a radius of 1,000 feet around the fireworks barge located in Shelter Cove, Hilton Head Island, SC (32°10′55″ N, 080°(44′ W).

(b) *Regulations:* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited, except as provided for herein, or unless authorized by the Coast Guard Captain of the Port Savannah, GA or his representative. Any concerned traffic can contact the representative of the Captain of the Port on board U.S. Coast Guard Auxiliary vessel, which will be on scene throughout the closure. Traffic

needing permission to pass through this safety zone can contact the representative for the COTP on VHF-FM channel 16 or via phone at (912) 652-4181.

(c) *Enforcement*: This rule will be enforced from 8 p.m. until 10 p.m. each Tuesday from June 15, 2004, through August 24, 2004, and from 8 p.m. to 10 p.m. July 4, 2004.

Dated: June 11, 2004.

D.R. Penberthy,

Commander, U. S. Coast Guard, Acting Captain of the Port Savannah.

[FR Doc. 04-15247 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-15-U

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

RIN 3010-AA06

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final rule.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) has adopted amendments to the regulations setting forth how Federal agencies take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment, pursuant to Section 106 of the National Historic Preservation Act (NHPA). Most of the amendments respond to court decisions which held that the ACHP could not require a Federal agency to change its determinations regarding whether its undertakings affected or adversely affected historic properties, and that Section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Other amendments clarify an issue regarding the time period for objections to “No Adverse Effect” findings and establish that the ACHP can propose an exemption to the Section 106 process on its own initiative, rather than needing a Federal agency to make such a proposal.

DATES: These amendments are effective August 5, 2004.

FOR FURTHER INFORMATION CONTACT: If you have questions about the amendments, please call the Office of Federal Agency Programs at 202-606-8503, or e-mail us at achp@achp.gov. When calling or sending an e-mail, please state your name, affiliation and nature of your question, so your call or

e-mail can then be routed to the correct staff person.

SUPPLEMENTARY INFORMATION: The information that follows has been divided into five sections. The first one provides background information introducing the agency and summarizing the history of the rulemaking process. The second section highlights the amendments incorporated into the final rule. The third section describes, by section and topic, the ACHP’s response to public comments on this rulemaking. The fourth section provides the impact analysis section, which addresses various legal requirements, including the Regulatory Flexibility Act, the Paperwork Reduction Act, the National Environmental Policy Act, the Unfunded Mandates Act, the Congressional Review Act and various relevant Executive Orders. Finally, the fifth section includes the text of the actual, final amendments.

I. Background

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, requires Federal agencies to take into account the effects of their undertakings on properties included, or eligible for inclusion, in the National Register of Historic Places (“National Register”) and to afford the Advisory Council on Historic Preservation (“ACHP”) a reasonable opportunity to comment on such undertakings. The regulations implementing Section 106 are codified at 36 CFR part 800 (2001) (“Section 106 regulations”).

On September 18, 2001, the Federal District Court for the District of Columbia (“district court”) upheld the Section 106 regulations against several challenges. Nevertheless, the district court invalidated portions of two subsections of the Section 106 regulations insofar as they allowed the ACHP to reverse a Federal agency’s findings of “No Historic Properties Affected” (previous Sec. 800.4(d)(2)) and “No Adverse Effects” (previous Sec. 800.5(c)(3)). See *National Mining Ass’n v. Slater*, 167 F. Supp. 2d 265 (D.D.C. 2001)(NMA v. Slater); and *Id.* (D.D.C. Oct. 18, 2001)(order clarifying extent of original order regarding Section 800.4(d)(2) of the Section 106 regulations).

Prior to the district court decision, an objection by the ACHP or the State Historic Preservation Officer / Tribal Historic Preservation Officer (“SHPO/THPO”) to a “No Historic Properties Affected” finding required the Federal agency to proceed to the next step in the process, where it would assess whether

the effects were adverse. An ACHP objection to a “No Adverse Effect” finding required the Federal agency to proceed to the next step in the process, where it would attempt to resolve the adverse effects.

On appeal by the National Mining Association, the D.C. Circuit Court of Appeals (“D.C. Circuit”) ruled that Section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency, and remanded the case to the district court. *National Mining Ass’n v. Fowler*, 324 F.3d 752 (D.C. Cir. 2003)(NMA v. Fowler). On September 4, 2003, the district court issued an order declaring sections 800.3(a) and 800.16(y) invalid to the extent that they applied Section 106 to the mentioned undertakings, and remanding the matter to the ACHP.

On September 25, 2003, through a notice of proposed rulemaking (NPRM)(68 FR 55354–55358), the ACHP proposed amendments to the mentioned subsections of the Section 106 regulations so that they would comport with the mentioned court rulings, while still being consistent with the purpose of helping Federal agencies avoid proceeding with a project under an erroneous determination that the project would not affect or adversely affect historic properties, and still triggering Section 106 compliance responsibilities for Federal agencies when they approve or fund State-delegated programs. A related, proposed amendment would clarify that even if a SHPO/THPO concur in a “No Adverse Effect” finding, the ACHP and any consulting party still have until the end of the 30 day review period to file an objection. Such objections would require the Federal agency to either resolve the objection or submit the dispute to the ACHP for its non-binding opinion. Finally, the ACHP also took the opportunity in that notice to submit an amendment to clarify that the ACHP could propose an exemption to the Section 106 process on its own initiative, rather than needing a Federal agency to make such a proposal.

After considering the public comments, during its business meeting on May 4, 2004, the ACHP unanimously adopted the final amendments to the Section 106 regulations that appear at the end of this notice of final rule.