



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0137]

RIN 1625-AA00

Safety Zone; Naval Helicopter Association (NHA) Red Bull

Helicopter Demonstration; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of San Diego Bay for a helicopter aerial demonstration sponsored by the Naval Helicopter Association (NHA). This safety zone is established to ensure the safety of the helicopter aircrew, spectators, safety vessels, and other vessels and users of the waterway. Unauthorized persons and vessels are prohibited from entering into, transiting through or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The Coast Guard requests public comments on the temporary safety zone.

DATES: This rule is effective from 6:30 p.m. to 7:30 p.m. on May

12, 2015. Public comments must be received by [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments using *one* of the listed methods, and see SUPPLEMENTAL INFORMATION for more information on public comments.

- *Online* - <http://www.regulations.gov> following website instructions.
- *Fax* - 202-493-2251.
- *Mail or hand deliver* - Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Hand delivery hours: 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202-366-9329).

Documents mentioned in this preamble are part of docket [USCG-2015-0137]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278-7656, e-mail D11-PF-MarineEventsSanDiego@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. Public Participation and Comments

We encourage you to submit comments (or related material) on this temporary final rule. We will consider all submissions and may adjust our final action based on your comments. Comments should be marked with docket number USCG-2015-0137 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the *Federal Register* Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ x 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following the website's instructions. You can also view the docket at the Docket Management Facility (see the mailing address under ADDRESSES) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Regulatory History and Information

The Coast Guard is issuing this temporary final rule safety zone for a planned fifteen minute air show over San Diego Bay without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable, because immediate action is needed to minimize

potential danger to the participants and the public during the event. Furthermore, the necessary information to determine whether the marine event poses a threat to persons and vessels was provided March 12, 2015, less than 60 days before the event, which is insufficient time to publish an NPRM. The Coast Guard requests new marine event permit applications at least 165 days in advance for proper environmental and administrative review of the event.

Nevertheless, we are providing an opportunity for subsequent public comment and, should public comment show the need for modifications to the safety zone during the event, we may make those modifications during the event and will provide actual notice of those modifications to the affected public.

C. Basis and Purpose

The legal basis and authorities for this temporary rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The Coast Guard believes a temporary safety zone is needed on the navigable waters of the San Diego Bay to ensure public safety for the NHA Red Bull Helicopter Demonstration. This event involves a planned fifteen minute air show which flies over a

portion of San Diego Bay. Because aerial stunt flying over busy waterways poses significant risk to public safety and property and the likely combination of large numbers of recreation vessels, congested waterways, and low flying could easily result in serious injuries or fatalities, a safety zone is necessary to safe guard spectators, vessels and the event pilots. For the safety concerns noted, it is important to have these regulations in effect during the event and impracticable to delay the regulations.

D. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone that will be enforced from 6:30 p.m. to 7:30 p.m. on May 12, 2015. This safety zone is necessary to provide for the safety of the helicopter aircrew, event spectators, safety patrol craft and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or their designated representative. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM). Just prior to the event and during the enforcement of the event, the Coast Guard will issue a broadcast notice to mariners (BNM) alert via VHF Channel 16.

This temporary safety zone will be bound by the following coordinates (North American Datum of 1983, World Geodetic System,

1984):

32°43.05N, 117°10.54W

32°43.05N, 117°10.46W

32°43.33N, 117°10.54W

32°43.33N, 117°13.46W

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size, location and limited duration of the safety zone. This zone impacts a small designated area of the San Diego bay for less than one hour. Furthermore, vessel traffic can safely transit around the safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 private and commercial vessels intending to transit or anchor in the impacted portion of the San Diego Bay from 6:30 p.m. through 7:30 p.m. on May 12, 2015.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the zone. The Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via VHF Channel 16 before the safety zone is enforced.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to

assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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 (adjusted for inflation) 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we

did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone on the navigable waters of San Diego Bay. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.01.

2. Add § 165.T11-689 to read as follows:

§ 165.T11-689 Safety zone; Naval Helicopter Association (NHA) Red Bull Helicopter Demonstration; San Diego Bay, San Diego, CA.

(a) Location. The safety zone will encompass the navigable waters encompassed by the following coordinates (North American Datum of 1983, World Geodetic System, 1984):

32°43.05N, 117°10.54W

32°43.05N, 117°10.46W

32°43.33N, 117°10.54W

32°43.33N, 117°10.46W

(b) Enforcement period. This section will be enforced from 6:30 p.m. to 7:30 p.m. on May 12, 2015. If the event concludes prior to the schedule termination time, the COTP will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) Definitions. The following definition applies to this section: designated representative means any commissioned,

warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) Regulations. (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(3) Upon being hailed by U.S. Coast Guard or designated patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies in patrol and notification of the regulation.

Dated: April 1, 2015

J. A. Janszen,

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

[FR Doc. 2015-08347 Filed: 4/9/2015 08:45 am; Publication Date: 4/10/2015]