



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**Docket No. USCG-2017-0323**

**RIN 1625-AA00**

**Safety Zone: City of Benicia Independence Day Fireworks Display, Benicia, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the Carquinez Strait near Benicia, CA, in support of the City of Benicia Independence Day Fireworks Display on July 4, 2017. This safety zone is established to ensure the safety of mariners and spectators from the dangers associated with the pyrotechnics. 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 their designated representative.

**DATES:** This rule is effective on July 4, 2017. This rule will be enforced from 8 a.m. to 10:30 p.m. on July 4, 2017.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG-2017-0323.

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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Lieutenant Junior Grade Christina Ramirez, U.S. Coast Guard Sector San Francisco; telephone (415) 399-2001 or e-mail at D11-PF-MarineEvents@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

APA	Administrative Procedure Act
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
COTP	Captain of the Port
NEPA	National Environmental Policy Act of 1969
NOAA	National Oceanic and Atmospheric Administration
PATCOM	Patrol Commander
RFA	Regulatory Flexibility Act of 1980
TFR	Temporary Final Rule

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary final rule 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.”

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 a NPRM. Publishing a NPRM would be impractical due to the date of the event.

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**. For these same reasons, the Coast Guard finds good cause for implementing this rule less than thirty days before the effective date.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zone.

The City of Benicia is sponsoring a fireworks display on July 4, 2017, in Benicia, CA, in approximate position 38°02'49" N 122°10'02" W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18652. During the loading, transit, and arrival of the fireworks barge and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. From 8 a.m. until 4 p.m. on July 4, 2017, the fireworks barge will be loading at Pier 50 in San Francisco, CA. The fireworks barge will remain at Pier 50 until the start of its transit to the display location. From 5:30 p.m. until 9 p.m. on July 4, 2017, the loaded fireworks barge will transit from Pier 50 to the launch site near Benicia, CA, in approximate position 38°02'49" N 122°10'02" W (NAD 83), where it will remain until the commencement of the fireworks display. Upon the commencement of the 20-minute fireworks display, at approximately 9:30 p.m. on July 4, 2017, the safety zone will expand to encompass the navigable waters within 420 feet of approximate position 38°02'49" N 122°10'02" W (NAD 83). This restricted area around the fireworks barge is necessary to protect spectators, vessels, and other property from the hazards associated with pyrotechnics.

### **IV. Discussion of the Final Rule**

The proposed safety zone will encompass the navigable waters around the barge near Benicia, CA. During the loading, transit, and arrival of the fireworks barge and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the

fireworks barge within a radius of 100 feet. From 8 a.m. until 4 p.m. on July 4, 2017, the fireworks barge will be loading at Pier 50 in San Francisco, CA. The fireworks barge will remain at Pier 50 until the start of its transit to the display location. From 5:30 p.m. until 9 p.m. on July 4, 2017, the loaded fireworks barge will transit from Pier 50 to the launch site near Benicia, CA, in approximate position 38°02'49" N 122°10'02" W (NAD 83), where it will remain until the commencement of the fireworks display. Upon the commencement of the 20-minute fireworks display, at approximately 9:30 p.m. on July 4, 2017, the safety zone will expand to encompass the navigable waters within a radius of 420 feet of approximate position 38°02'49" N 122°10'02" W (NAD 83). The safety zone shall terminate at 10:30 p.m. on July 4, 2017.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the launch site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch site to ensure the safety of participants, spectators, and transiting vessels.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying

both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, 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 will be notified via public Local Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

#### B. 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.

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Local Notice to Mariners.

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.

#### C. 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).

#### D. Federalism and Tribal Governments

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.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. 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.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration for categorically excluded actions is 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.

#### G. 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.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165-T11-849 to read as follows:

#### **§ 165-T11-849 Safety Zone; City of Benicia Independence Day Fireworks Display, Benicia,**

#### **CA.**

(a) Location. This safety zone is established in the navigable waters of the Carquinez Strait near Benicia, CA, as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18652. During the loading, transit, and arrival of the fireworks barge and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. From 8 a.m. until 4 p.m. on July 4, 2017, the fireworks barge will be loading at Pier 50 in San Francisco, CA. The fireworks barge will remain

at Pier 50 until the start of its transit to the display location. From 5:30 p.m. until 9 p.m. on July 4, 2017, the loaded fireworks barge will transit from Pier 50 to the launch site near Benicia, CA, in approximate position 38°02'49" N 122°10'02" W (NAD 83), where it will remain until the commencement of the fireworks display. Upon the commencement of the 20-minute fireworks display, at approximately 9:30 p.m. on July 4, 2017, the safety zone will expand to encompass the navigable waters within 420 feet of approximate position 38°02'49" N 122°10'02" W (NAD 83).

(b) Enforcement period. The safety zone described in paragraph (a) of this section will be enforced from 8 a.m. to 10:30 p.m. on July 4, 2017. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) Definitions. As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated to assist in the enforcement of the safety zone.

(d) Regulations. (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone may contact the Patrol Commander (PATCOM) on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

Dated: May 25, 2017

Anthony J. Ceraolo  
Captain, U.S. Coast Guard  
Captain of the Port, San Francisco  
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