



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2017-0321]

RIN 1625-AA00

Safety Zone: San Francisco Independence Day Fireworks Display,  
San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing temporary safety zones in the navigable waters of the San Francisco Bay near Aquatic Park in support of the San Francisco Fourth of July Fireworks Display on July 4, 2017. These safety zones are established to ensure the safety of participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective on from July 3 to July 4, 2017. This rule will be enforced from 9 a.m. on July 3, 2017 through 10:30 p.m. on July 4, 2017.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG-2017-0321. 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](mailto:D11-PF-MarineEvents@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Acronyms**

COTP	U.S. Coast Guard Captain on the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of Proposed Rule Making
PATCOM	U.S. Coast Guard Patrol Commander
APA	Administrative Procedure Act
NOAA	National Oceanic and Atmospheric Administration
U.S.C.	United States Code

**II. Regulatory History and Information**

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 an NPRM would be impractical because it must be in place by the date of the event, July 3, 2017.

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 legal basis for the proposed rule is 33 U.S.C 1231; 50 U.S.C. 191, 195; 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 zones.

San Francisco Travel Association will sponsor the San Francisco Independence Day Fireworks Display on July 4, 2017, near Aquatic Park in San Francisco, CA in approximate positions 37°48'49"N, 122°24'46"W and 37°48'45"N, 122°25'39"W (NAD83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650.

Loading of the pyrotechnics onto the fireworks barges is scheduled to take place from 9 a.m. on July 3, 2017 until 5 p.m. on July 4, 2017, at Pier 50 in San Francisco, CA. The fireworks barges will remain at Pier 50 until their transit to the respective display locations. Towing of the barges from Pier 50 to the display locations is scheduled to take place from 7:30 p.m. until 8:15 p.m. on July 4, 2017 where they will remain until the conclusion of the fireworks display.

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

The Coast Guard will enforce the San Francisco Independence Day Fireworks Display safety zones from 9 a.m. on July 3, 2017 through 10:30 p.m. on July 4, 2017.

These safety zones establish temporary restricted areas on the navigable waters within 100 feet of the fireworks barges during the loading, transit, and arrival of the pyrotechnics from the loading site to the display launch locations and until 15 minutes prior to the commencement of the fireworks display. 15 minutes prior to the commencement of the fireworks display, the safety zones will increase in size and encompass the navigable waters around the fireworks barges within a radius of 700 feet. The fireworks display is meant for entertainment purposes. These restricted areas around the fireworks barges are necessary to protect spectators, vessels, and other property from the hazards associated with pyrotechnics.

During the loading, transit, and until 15 minutes prior to the start of the fireworks display, the safety zones apply to the navigable waters around and under the fireworks barges within a radius of 100 feet. At 9:15 p.m. on July 4, 2017, 15 minutes prior to the commencement of the 30-minute fireworks display, the safety zones will increase in size and encompass the navigable waters around and under the fireworks barges within a radius of 700 feet and will be located off of Pier 39 in approximate position 37° 48'49"N, 122° 24'46"W (NAD 83) and off Black Point in approximate position 37°48'45"N, 122°25'39"W (NAD 83) for the San Francisco Independence Day Fireworks Display. The safety zones shall terminate at 10:30 p.m. on July 4, 2017.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the launch sites 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 areas. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch sites 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 these statutes and executive orders.

## A. Regulatory Planning and Review

E.O.s 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") 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 including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing

Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' (February 2, 2017).

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. The safety zones are limited in duration, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zones 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. 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 may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. These safety zones would be activated, and thus subject to enforcement, for a limited duration. When the safety zones are activated, vessel traffic could pass safely around the safety zones. The maritime public will be advised in advance of these safety zones via Broadcast 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 section.

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 Indian 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. 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 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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 safety zones lasting in a limited duration that will prohibit entry within 700 feet of the pyrotechnic launch locations. It 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., 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.

2. Add § 165.T11-850 to read as follows:

§165.T11-850 Safety Zone; San Francisco Independence Day

Fireworks Display, San Francisco Bay, San Francisco, CA.

(a) Location. These temporary safety zones are established in the navigable waters of the San Francisco Bay near Aquatic Park in San Francisco, CA, as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. From 9 a.m. on July 3, 2017 until 9:15 p.m. on July 4, 2017, the temporary safety zones apply to the nearest point of the fireworks barges within a radius of 100 feet during the loading, transit, and arrival of the fireworks barges from Pier 50 to the launch sites near Aquatic Park in approximate positions 37°48'49"N, 122°24'46"W and 37°48'45"N, 122°25'39"W (NAD83). From 9:15 p.m. until 10:30 p.m. on July 4, 2017, the temporary safety zones will increase in size and encompass the navigable waters around and under the fireworks barges in approximate positions 37°48'49"N, 122°24'46"W and 37°48'45"N, 122°25'39"W (NAD83) within a radius of 700 feet.

(b) Enforcement period. The zones described in paragraph (a) of this section will be enforced from 9 a.m. on July 3, 2017 until 10:30 p.m. on July 4, 2017. The Captain of the Port of San Francisco (COTP) will notify the maritime community of periods during which these zones 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 by or assisting the COTP in the enforcement of the safety zones.

(d) Regulations. (1) Under the general regulations in

33 CFR part 165, subpart C, entry into, transiting or anchoring within these safety zones is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zones are 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 zones 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 zones 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 zones 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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