



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2019-0317

RIN 1625-AA00

**Safety Zones; Northern California and Lake Tahoe Area Annual Fireworks Events,
San Francisco, CA**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend and establish several permanent safety zones in the Captain of the Port San Francisco zone. This action is necessary to provide for the safety of life on the navigable waters of the San Francisco Bay, Carquinez Strait, Mare Island Strait, Sacramento River, Lake Tahoe, and Monterrey Bay during annual fireworks displays. This proposed rulemaking would prohibit persons and vessels from entering the safety zones unless authorized by the Captain of the Port San Francisco or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0317 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone 415-399-3585, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port San Francisco
DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Fireworks displays in 33 CFR Part 165.1191 are held annually on the navigable waters within the Captain of the Port San Francisco (COTP) zone. After conducting a review of the fireworks displays listed in 33 CFR part 165.1191, the specifications for eight of the events listed in the table no longer accurately reflect the actual event parameters, and three annual fireworks displays are not listed in the table. The COTP has determined that potential hazards associated with the fireworks used in these displays would be a safety concern for anyone within the safety zones during the fireworks displays. The purpose of this rulemaking is to ensure safety on the navigable waters within the safety zones for the fireworks displays before, during, and after the scheduled events. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to amend Table 1 to § 165.1191. Eight fireworks displays will be amended, and three fireworks displays will be added.

The fireworks events we propose to amend are listed numerically in Table 1 of this section as item 7, “San Francisco Independence Day Fireworks,” item 8, “Fourth of July Fireworks, Berkeley Marina,” item 9, “Fourth of July Fireworks, City of Richmond,” item 19, “Red, White, and Tahoe Blue Fireworks, Incline Village, NV,” item 22, “Monte Foundation Fireworks,” item 24, “San Francisco New Years Eve Fireworks,” item 25, “Sacramento New Years Eve Fireworks,” and item 27, “Feast of Lanterns Fireworks.”

The display locations for items 7, 8, 9, 25, and 27 no longer accurately reflect the display locations for the events, so this rule proposes to insert updated location descriptions into the table.

The name of item 19 has changed from “Red, White, and Tahoe Blue Fireworks, Incline Village, NV” to “Incline Village Independence Day Fireworks” and would be updated in the table to reflect the name change.

The display dates listed in items 22, 24, and 27 do not accurately reflect the display dates for the fireworks displays, so this rule proposes to update them as follows. Item 22, “Monte Foundation Fireworks” currently states the date as the second Saturday in October, but the fireworks have occurred on the second Saturday or Sunday in October. Item 24, “San Francisco New Years Eve Fireworks” currently states it occurs on New Years Eve, but the event has lasted into the early hours of New Year’s Day, so we propose adding January 1st as a display date as well to be more accurate. Item 27, “Feast of Lanterns Fireworks” currently states it occurs on the last Saturday of July, but

due to the variance in the event dates, we are amending the dates to say a Saturday or Sunday in July. As stated in § 165.1191(a), the Coast Guard will provide exact dates, times, and other details concerning the fireworks listed in table 1 to §165.1191 in the Local Notice to Mariners at least 20 days prior to the event.

The Regulated Area description for item 22, “Monte Foundation Fireworks”, would be revised to clarify the safety zone will be in the navigable waters around and under the Capitola Pier.

This rule proposes to add three safety zones covering three reoccurring fireworks events to Table 1 in 33 CFR § 165.1191. The three new fireworks events would be listed in Table 1 of this section as item 31, “Fourth of July Fireworks, City of Benicia,” item 32, “Fourth of July Fireworks, City of Vallejo,” and item 33 “Berkeley Winter on the Waterfront Fireworks.” All three of these fireworks displays occurred in previous years 2017, 2018, and 2019. Both the Benicia, CA fireworks and the City of Vallejo, CA fireworks will occur annually on the Fourth of July. The Berkley, CA fireworks displays will occur annually on the second Saturday or Sunday in December. The Coast Guard believes it is beneficial to include these additional fireworks displays in the list of reoccurring permanent regulations to increase public awareness of when safety zones would be enforced in these marine areas. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the limited duration and narrowly tailored geographic areas of the safety zones. 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 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, 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator for the following reasons: (i) this rule will encompass only a small portion of each affected waterway for a limited period of time for each fireworks event, and (ii) the maritime public will be advised in advance of these safety zones via Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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 proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental

Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves safety zones of limited sizes and durations. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal

at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER**

INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 is proposing to amend 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: 46 U.S.C 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise Item 7, Item 8, Item 9, Item 19, Items 22, Item 24, Item 25, and Item 27, and add Item 31, Item 32, and Item 33 in Table 1 to § 165.1191 to read as follows:

§ 165. 1191 Northern California and Lake Tahoe Area Annual Fireworks Events.

TABLE 1 TO §165.1191

7. San Francisco Independence Day Fireworks	
Sponsor	The City of San Francisco.
Event Description	Fireworks Display.
Date	July 4th.
Location 1	A barge located approximately 1000 feet off San Francisco Pier 39.
Location 2	A barge located approximately 700 feet off of the San Francisco Municipal Pier at Aquatic Park.
Regulated Area	100-foot radius around each fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1000-foot radius upon commencement of the fireworks display.

8. Fourth of July Fireworks, Berkeley Marina	
Sponsor	Berkeley Marina.
Event Description	Fireworks Display.
Date	July 4th.
Location	A barge located near the Berkeley Marina Pier.
Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1000-foot radius upon commencement of the fireworks display.

9. Fourth of July Fireworks, City of Richmond	
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	A barge located in the Richmond Harbor in Richmond, CA.

Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 560-foot radius upon commencement of the fireworks display.

19. Incline Village Independence Day Fireworks	
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	500-1000 feet off Incline Village, NV in Crystal Bay.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

22. Monte Foundation Fireworks	
Sponsor	Monte Foundation.
Event Description	Fireworks Display.
Date	Second Saturday or Sunday in October.
Location	Capitola Pier in Capitola, CA.
Regulated Area	1000-foot radius safety zone in the navigable waters around and under the Capitola Pier.

24. San Francisco New Year's Eve Fireworks	
Sponsor	City of San Francisco.
Event Description	Fireworks Display.
Date	December 30th through January 1 st .
Location	1000 feet off the Embarcadero near the Ferry Plaza in San Francisco, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

25. Sacramento New Year's Eve Fireworks	
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	New Year's Eve, December 31st.
Location	Near the Tower Bridge, Sacramento River, Sacramento, CA.
Regulated Area	The navigable waters of the Sacramento River within 700 feet of the two shore-based launch locations near the Tower Bridge in Sacramento, CA and the bridge-based launch location on the Tower Bridge in Sacramento, CA.

27. Feast of Lanterns Fireworks	
Sponsor	Feast of Lanterns, Inc.
Event Description	Fireworks Display.
Date	A Saturday or Sunday in July.
Location	Near Lover's Point Park in Pacific Grove, CA.
Regulated Area	The area of navigable waters within a 1000-foot radius of the launch platform located on the beach near Lover's Point Park.

31. Benicia Fourth of July Fireworks	
Sponsor	City of Benicia, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Carquinez Strait, Benicia, CA.
Regulated Area	1000-foot radius safety zone around the fireworks launch platform located on the Benicia First Street Pier.

32. Vallejo Fourth of July Fireworks	
Sponsor	City of Vallejo, CA.
Event Description	Fireworks Display.

Date	July 4th.
Location	Mare Island Strait, Vallejo, CA.
Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1000-foot radius upon commencement of the fireworks display.

33. Berkeley Winter on the Waterfront Fireworks	
Sponsor	City of Berkeley, CA.
Event Description	Two Fireworks Displays.
Date	Second Saturday or Sunday in December.
Location	Near the entrance to the Berkeley Marina in Berkeley, CA.
Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 500-foot radius upon commencement of the first fireworks display and remains in effect until after the conclusion of the second fireworks display.

Dated: March 9, 2020

Howard H. Wright
 Captain, U.S. Coast Guard
 Alternate Captain of the Port, San Francisco
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