



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: Final rule.

SUMMARY: The Coast Guard is amending and establishing 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 Monterey Bay during annual fireworks displays. This regulation prohibits persons and vessels from entering the safety zones unless authorized by the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0317 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, 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 Information and Regulatory History

Fireworks displays in 33 CFR 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 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. In response, on March 17, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zones; Northern California and Lake Tahoe Area Annual Fireworks Events, San Francisco, CA” (85 FR 15082). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended May 18, 2020, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks used in these annual displays would be a safety concern for any

unauthorized vessels or persons within the safety zones during the respective fireworks displays. The purpose of this rule is to ensure safety on the navigable waters within the safety zones for the fireworks displays before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published March 17, 2020. The comment requested an explanation for the variance between safety zone sizes for different fireworks displays and inquired about whether or not current COVID-19 public health orders were taken into effect when assessing the costs and benefits of this regulation.

Each fireworks display has different setup and display characteristics, designated by the fireworks display sponsor. To determine the size of the safety zone used for each fireworks display, the Coast Guard follows guidelines established by the National Fire Protection Association in relation to the largest shell size used for each fireworks display. In addition, safety zone characteristics also vary among displays depending on the pyrotechnics launch site. Fireworks displays that are launched from a barge require an initial 100-foot safety zone beginning when the barge is being loaded with pyrotechnics. In the event of a barge-based fireworks display, the safety zone will increase from 100 feet to full size upon commencement of the fireworks display. The safety zones in this regulation have been thoroughly reviewed to ensure that proper distance is maintained from the fireworks launch site for spectator and boating safety.

The Coast Guard is amending this regulation to provide for public safety from the hazards associated with fireworks displays. While this regulation amendment is occurring during the response to COVID-19, these changes are necessary based on

historical event details. The Coast Guard is aware that public health officials currently impose safety requirements intended to mitigate the spread of the coronavirus. However, a Coast Guard safety zone is not the correct tool to use to address social distancing, because a safety zone restricts movement into and within a defined zone, but does not control the movement of people or vessels outside of that zone. Changing the sizes of these safety zones would not have any effect on spectators' proximity to one another outside of the safety zone. Additionally, this regulation amends and adds safety zone details for annual fireworks displays continuing indefinitely, so the details must be accurate for these displays under normal circumstances, otherwise this regulation will not be useful in years to come. If the event sponsor or local government decides not to hold the event, the safety zones would not be enforced. Overall, the Coast Guard has assessed the costs and benefits associated with this rule, and does not find that the current response to COVID-19 changes that assessment.

There are three changes to the regulatory text of this rule from the proposed rule in the NPRM that are unrelated to the concerns raised by the commenter. The changes to the proposed text are made to item 22 "Monte Foundation Fireworks," item 25 "Sacramento New Years Eve Fireworks," and item 31 "Benicia Fourth of July Fireworks," and they are discussed later in this section with the other changes to item 22, item 25, and item 31.

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

The fireworks events being amended 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 inserts updated location descriptions into the table.

The display names of items 19, 24, and 25 will be updated. Item 19, “Red, White, and Tahoe Blue Fireworks, Incline Village, NV,” will be renamed “Incline Village Independence Day Fireworks.” Item 24, “San Francisco New Years Eve Fireworks,” and item 25, “Sacramento New Years Eve Fireworks,” will be updated to include an apostrophe in “New Year’s Eve.”

The display dates listed in items 22, 24, 25, and 27 do not accurately reflect the display dates for the fireworks displays, so this rule will 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 Year’s Eve, but the event has typically lasted into the early hours of New Year’s Day, so we are adding January 1st as a display date as well to be more accurate. A change to item 25, “Sacramento New Years Eve Fireworks,” not proposed in the NPRM will improve the accuracy of the date by deleting “New Years Eve” from the date description and adding January 1st to the display date because the display has typically lasted into the early hours of New Year’s Day. 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 and associated safety zones 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 and Sponsor description for item 22, “Monte Foundation Fireworks,” will be revised. A change to item 22 not proposed in the NPRM will improve the accuracy of the regulated area by noting the regulated area will consist of a 1,000 foot radius around the launch site, instead of describing it as a 1,000 foot radius safety zone. Additionally, this rule corrects the sponsor name for this regulated area from “Monte Foundation Fireworks” to the “Monte Foundation.”

This rule adds three safety zones covering three reoccurring fireworks events to Table 1 in 33 CFR § 165.1191. The three new fireworks events will 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 Berkeley, 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 will be enforced in these marine areas. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

The Regulated Area description for item 31, “Benicia Fourth of July Fireworks,” will be revised to include one change from the regulatory text of the NPRM. The accuracy of the Regulated Area description will be improved by noting the regulated area will consist of a 1,000 foot radius around the launch site, instead of describing it as a 1,000 foot radius safety zone.

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule 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 received no comments from the Small Business Administration on this rulemaking. 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.

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 rule will 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.

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 call or email 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.

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 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 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 of limited sizes and durations. It is 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 Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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, 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: 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. In § 165.1191, amend Table 1 by revising entries 7, 8, 9, 19, 22, 24, 25, and 27, and add entries 31, 32, and 33 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 1,000 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 1,000-foot radius upon commencement of the fireworks display.
8. Fourth of July Fireworks, Berkeley Marina	
Sponsor	Berkeley Marina.
Event	Fireworks Display.

Description	
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 1,000-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	500-1,000 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 1,000-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	1,000-foot radius around the fireworks launch site 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 1st.
Location	1,000 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 1,000-foot radius upon commencement of the fireworks display.
25. Sacramento New Year's Eve Fireworks	
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	December 31 st through January 1st.
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 1,000-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	1,000-foot radius around the fireworks launch site 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 1,000-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: June 23, 2020

Marie B. Byrd
 Captain, U.S. Coast Guard
 Captain of the Port, San Francisco

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