

Interference with Constitutionally Protected Property Rights.

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.

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.

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

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. 1226, 1231; 46 U.S.C. Chapter 701; 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; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0471, to read as follows:

§ 165.T05–0471 Safety Zone: John H. Kerr Lake, Clarksville, VA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, within 700 feet of position 36°37'51" N/078°32'50" W (NAD 1983) on John H. Kerr Lake near Clarksville, VA.

(b) *Definition:*

(1) As used in this section; Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Hampton Roads, Virginia to act on his behalf.

(c) *Regulation:*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668–5555 or (757) 484–8192.

(4) The Captain of the Port Representative enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) Enforcement Period: This regulation will be enforced from 9 p.m. to 10 p.m. on July 19, 2008.

Dated: June 13, 2008.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0269]

RIN 1625–AA00

Safety Zone; Mission Bay Yacht Club 4th of July Display; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay in support of the Mission Bay Yacht Club 4th of July Display near the navigation channel in the vicinity of Santa Clara Point. The safety zone is necessary to provide for the safety of the crew, spectators, and participants of the event, participating vessels and other vessels and users of the waterway. 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.

DATES: This rule is effective from 8:30 p.m. until 10 p.m. on July 4, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0269 and are available online at www.regulations.gov. They are also available for inspection or copying two locations: The 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and at Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego, CA at telephone (619) 278–7233.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 an NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay in support of the Mission Bay Yacht Club 4th of July Display. The safety zone is comprised of an 800-foot radius located around an anchored firing barge. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, and participants of the event, participating vessels and other vessels and users of the waterway. 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.

Discussion of Rule

The Coast Guard establishes this temporary rule, pursuant to 33 U.S.C. 1225, to provide for the safety of the participants, spectators and other users of the waterways. This safety zone will be effective from 8 p.m. to 10 p.m. on July 4, 2008. This temporary safety zone is necessary to ensure the safety of participants and spectators of the Mission Bay Yacht Club 4th of July Display. The duration of the show is expected to be approximately 20–25 minutes. The event involves one anchored barge, which will be used as a platform for launching of fireworks. The limits of the temporary safety zones include all areas within an 800-foot radius around an anchored barge. The barge will be anchored at a location approximately 600 feet east of the Santa Clara Point. This temporary safety zone is necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. 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.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. § 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Due to the temporary safety zone's short duration of one and a half hours, its limited scope of implementation, and because vessels will have an opportunity to request authorization to transit through the zone or the vessels may safely travel around the zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under

paragraph 10(e) of the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 vessels intending to transit or anchor in a portion of Mission Bay from 8:30 p.m. to 10 p.m. on July 4, 2008. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone only encompasses a small portion of the waterway, it is short in duration at a late hour when commercial traffic is low, vessels may safely travel around the safety zone, and the Captain of the Port may authorize entry into the zone, if necessary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Petty Officer Kristen Beer, U.S. Coast Guard Sector San Diego at (619) 278–7233.

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.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 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.

Taking of Private Property

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

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.

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.

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a

safety zone. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

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. 1225, 1231; 46 U.S.C. Chapter 701; 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; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–045 to read as follows:

§ 165.T11–045 Safety Zone: Mission Bay Yacht Club 4th of July Display; Mission Bay, San Diego, CA.

(a) *Location.* The limits of the temporary safety zones include all areas within an 800-foot radius around an anchored barge. The barge will be anchored at a location approximately 600 feet east of the Santa Clara Point.

(b) *Effective Period.* This safety zone will be in effect from 8:30 p.m. until 10 p.m. on July 4, 2008. If the display concludes prior to the scheduled termination time, the Captain of the Port or his designated representative will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the U.S. Coast Guard Patrol Commander. The U.S. Coast Guard Patrol Commander may be contacted via VHF–FM Channel 16.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law

enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: June 10, 2008.

C.V. Strangfeld,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0164]

RIN 1625-AA00

Safety Zones; Big Bay July 4th Fireworks Show; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing four (4) temporary safety zones on the navigable waters of San Diego Bay in support of the North San Diego Bay July 4th Fireworks Show. These safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. until 10 p.m. on July 4, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0164 and are available online at www.regulations.gov. They are also available for inspection or copying two locations: the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and at Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101-1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Petty Officer Kristen Beer, Waterways

Management, U.S. Coast Guard Sector San Diego, CA at telephone (619) 278-7233.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 an NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The Coast Guard is establishing four (4) temporary safety zones on the navigable waters of San Diego Bay in support of the North San Diego Bay July 4th Fireworks Show. These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

Discussion of Rule

The Coast Guard establishes this temporary rule, pursuant to 33 U.S.C. 1225, to provide for the safety of the participants, spectators and other users of the waterways. These safety zones will be effective from 8 p.m. to 10 p.m. on July 4, 2008. These four temporary safety zones are necessary to ensure the safety of participants and spectators of the North San Diego Bay July 4th Fireworks Show. The duration of the show is expected to be approximately 20-25 minutes. The event involves four (4) anchored barges, which will be used as platforms for the launching of fireworks.

The limits of the temporary safety zones include all areas within a 1200 foot radius around the firing locations at the following points: 32-42.83' N, 117-13.20' W (in vicinity of Shelter Island), 32-43.33' N, 117-12.00' W (in vicinity

of Harbor Island), 32-43.00' N, 117-10.80' W (in vicinity of North Embarcadero), and 32-43.23' N, 117-10.05' W (in vicinity of Seaport Village/Coronado Landing).

These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. § 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Due to the temporary rule's short duration of two hours, its limited scope of implementation, and because vessels will have an opportunity to request authorization to transit through the zone or the vessels may safely travel around the zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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