



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0741]

RIN 1625-AA00

Safety Zone; America's Cup Aerobatic Box, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones in the navigable waters of the San Francisco Bay near Pier 27 in San Francisco, CA in support of 2013 America's Cup air shows. These safety zones are established to provide a clear area on the water for pilots to initiate maneuvers and also provide for the safety of pilots, spectators, and other vessels transiting the area in the unlikely event that an aircraft crashes during the air show. All persons or vessels are prohibited from entering the safety zones and all persons or vessels are prohibited from anchoring or otherwise loitering in the area during the scheduled events without the permission of the Captain of the Port or their designated representative.

DATES: This rule is effective as to persons with actual notice starting September 6, 2013. This rule is effective [INSERT DATE

OF PUBLICATION], for purposes of 5 U.S.C. 552 enforcement. This rule will be in effect until September 23, 2013. This rule will be enforced on September 6, 2013 from 6 p.m. until 7 p.m., September 7, 2013 from 11:30 a.m. until 12:30 p.m., and any other time an air show event is scheduled to take place within the effective period as announced by America's Cup Race Management.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2013-0741. 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. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399-3585 or e-mail at D11-PF-MarineEvents@uscg.mil. If you have questions on viewing or submitting material to the docket, call the Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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| ACRM | America's Cup Race Management |
| COTP | Captain of the Port |

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking

A. Regulatory History and Information

On January 30, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) proposing to regulate the on-water activities associated with the "America's Cup World Series" regattas in 2012 and the "Louis Vuitton Cup," "Red Bull Youth America's Cup," and "America's Cup Finals Match" scheduled to occur in July, August, and September, 2013 (77 FR 04501). After reviewing all comments received in response to the NPRM, the Coast Guard published a temporary final rule on July 17, 2012, that created a special local regulation (SLR) and safety zone, establishing regulated areas on the water to enhance safety and maximize access to the affected waterways during the America's Cup sailing events (77 FR 41902).

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." Under 5 U.S.C. 553(d)(3), for the same reasons noted earlier, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal

Register. The U.S. Coast Guard was notified on August 02, 2013 that America's Cup Race Management (ACRM) was planning on conducting air shows in the navigable waters of the San Francisco Bay near Pier 27 on several days throughout the month of September, 2013. The America's Cup air show activities would occur before the rulemaking process would be completed, and delaying the effective date of this rule to allow for a comment period would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated aircraft performing aerobatic maneuvers in the navigable waters of the San Francisco Bay near Pier 27. The safety zones are necessary to provide a clear area on the water for pilots to initiate maneuvers and also provide for the safety of pilots, spectators, and other vessels transiting the area in the unlikely event that an aircraft crashes during the air show. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

The Coast Guard has decided to establish safety zones in the

navigable waters of the San Francisco Bay near Pier 27 in San Francisco, CA in support of America's Cup air shows to mitigate the dangers posed by aircraft executing aerobatic maneuvers in the navigable waters of the San Francisco Bay near Pier 27.

C. Discussion of the Final Rule

The Coast Guard is establishing safety zones in the navigable waters of the San Francisco Bay near Pier 27 in San Francisco, CA during the America's Cup air shows in September of 2013 to ensure the safety of pilots participating in the air shows and spectators viewing the air show from the water. The safety zones will be effective from September 6, 2013 to September 23, 2013.

The Coast Guard will enforce the safety zones on September 6, 2013 from 6 p.m. until 7 p.m., September 7, 2013 from 11:30 a.m. until 12:30 p.m., and any other time an air show event is scheduled to place within the effective period as announced by America's Cup Race Management. The safety zones will encompass the navigable waters of the San Francisco Bay within a shape bounded by the following coordinates: 37°49'12"N, 122°24'10"W; 37°48'50"N, 122°24'35"W; 37°48'04"N, 122°23'30"W; 37°48'26"N, 122°23'05"W; thence back to the point of origin (NAD 83). At the conclusion of the scheduled events the safety zones shall terminate.

The effect of the safety zones will be to provide a clear area on the water for pilots to initiate maneuvers and also

provide for the safety of pilots, spectators, and other vessels transiting the area in the unlikely event that an aircraft crashes during the air show. At the conclusion of the scheduled air shows, the safety zones shall terminate. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in safety zones.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on numerous statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone and no loitering area are limited in duration, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to a small section of the waters encompassed by the safety zone, the effect of this rule

will not be significant because the local waterway users will have access to the no loitering area during the event. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. 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 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. The safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. The 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 zone. The maritime public will be advised in advance of these safety zones via Broadcast Notice to Mariners.

3. Assistance for Small Entities

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.

4. 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).

5. Federalism

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.

6. 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.

7. 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.

8. Taking of Private Property

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

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 (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. An environmental analysis checklist supporting this determination and a 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. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 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-T11-594 to read as follows:

§165-T11-594 Safety zone; America's Cup Aerobatic Box, San Francisco Bay, San Francisco, CA

(a) Location. These temporary safety zones are established for the navigable waters of the San Francisco Bay near Pier 27 in San Francisco, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. The safety zone will encompass the navigable waters of the San Francisco Bay within a shape bounded by the following coordinates: 37°49'12"N, 122°24'10"W; 37°48'50"N, 122°24'35"W; 37°48'04"N, 122°23'30"W; 37°48'26"N, 122°23'05"W; thence back to the point of origin (NAD 83).

(b) Enforcement periods. This section will be enforced on September 6, 2013 from 6 p.m. until 7p.m., September 7, 2013 from 11:30 a.m. until 12:30 p.m., and any other time an air show event is scheduled to take place within the effective period as announced by America's Cup Race Management. This section will be in effect until September 23, 2013. 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 or via actual notice on-scene.

(c) Regulations. (1) The safety zone is closed to all persons and vessels.

(2) The public can contact Sector San Francisco Bay at (415) 399-3530 to obtain information concerning enforcement of this rule.

(d) Enforcement. All persons and vessels must comply with the instructions of the COTP or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and

petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by local law enforcement as necessary. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: September 5, 2013

Gregory G. Stump
Captain, U.S. Coast Guard
Captain of the Port San Francisco

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