



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0756]

RIN 1625-AA87

Security Zone; U.S. Navy/U.S. Coast Guard Assets Demonstration in Conjunction with Fleet Week San Diego, San Diego Bay; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary 750-foot radius security zone on the navigable waters of the U.S. in San Diego Bay, San Diego, CA, in support of Fleet Week San Diego on September 10, 2016. This action is necessary to provide for the safety and security of U.S. Navy and U.S. Coast Guard surface and aerial assets, crews, and support personnel who will be performing mission capability and search and rescue demonstrations. Unauthorized persons and vessels will be prohibited from entering into or remaining in the security zone unless authorized by the Captain of the Port San Diego or his designated representative.

**DATES:** This rule is effective from 11 a.m. until 2 p.m. on September 10, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0756 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 e-mail LT Robert Cole, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7656, e-mail D11MarineEventsSD@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
NPRM	Notice of Proposed Rulemaking
SMIB	Safety Marine Information Broadcast
U.S.C.	United States Code
VHF	Very High Frequency

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary 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 thirty days in advance of its publication in the Federal register, because publishing an NPRM would be impracticable. The availability of assets and the desired location of the demonstration could not be confirmed in time to allow for a notice and comment period. Delay in this temporary rule’s effective date would be detrimental to the immediate need to ensure the safety and security of U.S. Navy and U.S. Coast Guard assets and personnel.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good

cause exists for making it effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because of the immediate need to ensure the security of the U.S. Navy and U.S. Coast Guard assets and personnel.

### **III. Legal Authority and Need for Rule**

The legal basis and authorities for this temporary rule are found in 33 U.S.C. 1231, 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5, and 165.30; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory security zones. The Coast Guard is establishing a temporary security zone on the navigable waters of the San Diego Bay to ensure the safety and security of U.S. Navy and U.S. Coast Guard assets and personnel in San Diego, CA, on September 10, 2016.

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

The Coast Guard is establishing a temporary security zone that will be enforced from 11:00 a.m. to 2:00 p.m. on September 10, 2016. This security zone will encompass the waters within a 750-foot radius centered at the following coordinate: 32° 43' 18" N, 117° 12' 11" W. The purpose of the security zone is intended to protect the U.S. Navy and U.S. Coast Guard surface and aerial assets, crews, and support personnel who will be performing mission capability and search and rescues demonstrations in San Diego, CA. Persons and vessels will be prohibited from entering into or remaining in the security zone unless authorized by the COTP San Diego or his designated representative. Prior to the event and during the enforcement of the event, the Coast Guard will issue a SMIB via VHF Channel 16/22A.

### **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

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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This determination is based on the size, location and limited duration of the security zone. This zone impacts a small designated area of the San Diego bay for a very limited period. Furthermore, vessel traffic can safely transit around the security zone.

### 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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portion of the San Diego Bay from 11:00 a.m. through 2:00 p.m. on September 10, 2016.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the zone, and the zone will be enforced for a short duration of time. The Coast Guard will issue a SMIB to

mariners via VHF Channel 16 and 22A before the security zone is enforced.

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

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 it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 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.ID, 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 establishment of a security zone lasting only 3 hours on the navigable waters of San Diego Bay. It 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. 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, 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. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5, 165.30; Department of Homeland Security Delegation No. 0170.01.

2. Add § 165.T11-797 to read as follows:

#### **§ 165.T11-797 Security Zone; San Diego Bay; San Diego, CA.**

(a) Location. The following area is a security zone: The limits of the security zone will include all the navigable waters within a 750-foot radius centered at the following coordinate: 32° 43' 18" N, 117° 12' 11" W.

(b) Definitions. The following definition applies to this section: designated representative means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard,

Coast Guard Auxiliary, or local, state, or federal law enforcement vessels that have been authorized to act on the behalf of the Captain of the Port.

(c) Regulations. (1) Under the general regulations in 33 CFR 165.33, entry into, or movement within this zone is prohibited unless authorized by the Captain of the Port San Diego or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(3) Upon being hailed by U.S. Coast Guard or designated patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies in patrol and notification of the regulation.

(5) Vessel operators desiring to enter or operate within this security zone shall contact the Captain of the Port or his designated representative via VHF channel 16 to obtain permission to do so.

(d) Enforcement period. This section will be enforced from 11:00 a.m. to 2:00 p.m. on September 10, 2016.

Dated: August 10, 2016.

---

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

[FR Doc. 2016-20432 Filed: 8/24/2016 8:45 am; Publication Date: 8/25/2016]