



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2017-0096]

RIN 1625-AA08

Special Local Regulation; Red Bull Air Race – San Diego 2017; San Diego Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is temporarily establishing special local regulations for the Red Bull Air Race – San Diego 2017 event held on the navigable waters of San Diego Bay, California. This action is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in specific waters of San Diego Bay from April 14, 2017, from 8:00 a.m. to 6:30 p.m., from April 15, 2017 from 10:00 a.m. to 6:00 p.m., and from April 16, 2017 from 10:00 a.m. to 4:30 p.m. We invite your comments on this rulemaking.

**DATES:** This rule is effective from April 14, 2017 through April 16, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0096 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 Lieutenant Robert D. 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**

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule
BNM	Broadcast Notice to Mariners
LNM	Local Notice to Mariners
COTP	Captain of the Port

**II. Regulatory Information**

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 finds good cause that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule as there is not enough time to complete notice and comment rulemaking before the event is scheduled to take place due to specific event details that were not provided by the event sponsor in time. For this reason, publishing an NPRM would be impracticable.

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.** This rule is necessary for the safety of life on these navigable waters during the airplane race. For the reasons above, it would be impracticable to delay this rule to provide a full 30 days notice.

### **III. Background, Purpose and Legal Basis**

The Red Bull Air Race – San Diego 2017 event will involve low flying airplanes racing through a predetermined course of inflatable pylons situated on anchored barges and positioned in certain portions of San Diego Bay. The COTP San Diego has determined that potential hazards associated with the air race event would be a safety concern for anyone intending to operate on certain waters of San Diego Bay.

The purpose of this rulemaking is to ensure the safety of event participants, spectators and transiting vessels on the navigable waters of San Diego Bay before, during, and after the scheduled event. 33 U.S.C. 1233, authorizes the Coast Guard to establish and define special local regulations to promote the safety of life on navigable waters.

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

In this temporary final rule, the regulations in 33 CFR 100.1101 will be temporarily inserted for Table 1, Item 19 of that section in order to reflect that the special local regulation will be effective and enforced from April 14, 2017, from 8:00 a.m. to 6:30 p.m., from April 15, 2017 from 10:00 a.m. to 6:00 p.m., and from April 16, 2017 from 10:00 a.m. to 4:30 p.m. This addition is needed to ensure that adequate regulations are in place to protect the safety vessels and individuals that may be present in the regulated area. No other portion of Table 1 of § 100.1101 or other provisions in § 100.1101 shall be affected by this regulation.

The special local regulations are necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the San Diego Bay waterway. Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the event times. Additionally, the Patrol Commander (PATCOM) will control the movement of all vessels within the regulated area and will restrict vessels from entering the regulated area. Before the effective period, the Coast Guard will publish information on the event in the weekly LNM. The regulatory text appears at the end of this document.

## **V. Regulatory Analysis**

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**

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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 including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior

regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it .

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. The Coast Guard will publish a LNM, issue a BNM via VHF-FM marine channel 16 that details the vessel restrictions of the regulated area, and distribute a special local regulation flyer for public use.

#### 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 San Diego Bay, CA, from April

14, 2017, from 8:00 a.m. to 6:30 p.m., from April 15, 2017 from 10:00 a.m. to 6:00 p.m., and from April 16, 2017 from 10:00 a.m. to 4:30 p.m.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic will be allowed to pass through the area with permission of the COTP, or his designated representative, during a predefined schedule arranged by the event sponsor, and the special local regulation is limited in size and duration. The Coast Guard will issue maritime advisories widely available to all waterway users. Before the effective period, the Coast Guard will publish event information on the internet in the weekly LNM marine information report. 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 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 rule or any policy or action of the Coast Guard.

### C. 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).

#### D. Federalism and Indian Tribal Government

A rule has implications for federalism under E.O. 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 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 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 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 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 marine event special local regulations on the navigable waters of San Diego Bay. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the ADDRESSES section of this preamble. 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 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. In § 100.1101, at the end of Table 1 to § 100.1101, add item “19” to read as follows:

**§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.**

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Table 1 to § 100.1101

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19. Red Bull Air Race – San Diego 2017	
Sponsor	Mountain Sports International
Event Description	Airplane Race
Date	April 14, 2017 through April 16, 2017
Location	San Diego Bay, CA.
Regulated Area	The navigable waters of San Diego Bay bound within these coordinates (NAD 83):  32° 42’ 41” N, 117° 10’ 33” W  32° 42’ 14” N, 117° 10’ 50” W  32° 41’ 37” N, 117° 09’ 51” W  32° 41’ 56” N, 117° 09’ 29” W

Dated: March 29, 2017.

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J. R. Buzzella,

Captain, U.S. Coast Guard,

Captain of the Port San Diego.

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