



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2019-0730]

RIN 1625-AA00

Safety Zone; 2019 Monte Labor Day Fireworks Display, Carnelian Bay, Carnelian Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on the navigable waters of Carnelian Bay near Carnelian West Beach in support of the 2019 Monte Labor Day Fireworks Display on September 1, 2019. These safety zones are necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 7 a.m. on August 31, 2019 to 9:20 p.m. on September 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0730 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 MST1 David Robey, Waterways Management, U.S. Coast Guard; telephone (415) 399-7440, e-mail 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
§	Section
U.S.C.	United States Code

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.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until August 16, 2019. The Coast Guard must establish these safety zones by August 31, 2019 and therefore lacks sufficient time to effectuate the full notice and comment process before issuing the rule in this instance.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. For similar reasons as stated above, notice and comment procedures would be impracticable in this instance due to the short notice provided for this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the 2019 Monte Labor Day Fireworks Display on September 1, 2019, will be a safety concern for anyone within a 100-foot radius of the fireworks barges during loading and staging and anyone within a 420-foot radius of the fireworks barges starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, these safety zones are needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks barges during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone around each of two separate fireworks barges simultaneously from 7 a.m. on August 31, 2019 until 9:20 p.m. on September 1, 2019, during the loading, staging, and transit of the two fireworks barges in Carnelian Bay, during the fireworks display, and lasting until 30 minutes after completion of the fireworks display. From 7 a.m. on August 31, 2019 to 8 p.m. on September 1, 2019, during the loading, staging, and transit of the fireworks barges until 30 minutes prior to the start of the fireworks display, scheduled for approximately 8:30 p.m., the safety zones will encompass the navigable waters around and under the fireworks barges, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barges. Loading the pyrotechnics onto the fireworks barges is scheduled from 7 a.m. to 9 a.m. on August 31, 2019, at the Lake Forest boat ramp in Tahoe City, CA.

The fireworks barges will remain at the Lake Forest boat ramp until the start of their transit to the display locations. Towing of the barges from the Lake Forest boat

ramp to the display locations is scheduled to take place from 9 a.m. to 10 a. m. on August 31, 2019, where they will remain until the conclusion of the fireworks display.

At 8 p.m. on August 31, 2019, 30 minutes prior to the commencement of the 20-minute 2019 Monte Labor Day Fireworks Display, the safety zones will increase in size and encompass the navigable waters around and under the fireworks barges, from surface to bottom, within a circle formed by connecting all points 420 feet from the circle centers at approximate positions 39° 13' 17.76" N, 120° 4' 47.64" W (NAD 83) and 39° 13' 20.22" N, 120° 4' 43.44" W (NAD 83). The safety zones will terminate at 9:20 p.m. on September 1, 2019.

The effect of the safety zones is to restrict navigation in the vicinity of the fireworks loading, staging, transit, and firing sites. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing sites to ensure the safety of participants, spectators, and transiting vessels.

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 area of the safety zones. The safety zones impact two 420-foot radius areas of Carnelian Bay for a 38-hour-and-20-minute duration. The vessels desiring to transit through the safety zones may do so upon express permission from the COTP or the COTP’s designated representative.

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 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 temporary safety zones may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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 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. 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 Directive 023-01 and U.S. Coast Guard Environmental Planning Policy, 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 two safety zones lasting 38 hours and 20 minutes that prevent entry to two 420-foot radius areas. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of Department of Homeland Security Directive 023-01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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: 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. Add § 165.T11-994 to read as follows:

§165.T11-994 Safety Zone; 2019 Monte Labor Day Fireworks Display, Carnelian Bay, Carnelian Bay, CA.

(a) Location. The following areas are safety zones around two separate fireworks barges: from 7 a.m. on August 31, 2019, to 8 p.m. on September 1, 2019, all navigable waters of Carnelian Bay, from surface to bottom, within two circles formed by connecting all points 100 feet out from each of the two fireworks barges during their loading and staging at the Lake Forest boat ramp in Tahoe City, as well as during transit and arrival to the display location in Carnelian Bay, CA. Between 8 p.m. on September 1, 2019 and 9:20 p.m. on September 1, 2019, both of the safety zones will expand to all navigable waters, from surface to bottom, within two circles formed by connecting all points 420 feet out from each fireworks barge in approximate positions 39° 13' 17.76" N, 120° 4' 47.64" W (NAD 83) and 39° 13' 20.22" N, 120° 4' 43.44" W (NAD 83).

(b) Definitions. As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zones.

(c) Regulations. (1) Under the general safety zones regulations in § 165.23, you may not enter the safety zones described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zones must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zones must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zones on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

(d) Information broadcasts. The COTP or the COTP's designated representative will notify the maritime community of periods during which these zones will be enforced in accordance with § 165.7.

Dated: August 23, 2019.

Howard H. Wright,
Captain, U.S. Coast Guard,
Alternate Captain of the Port, San Francisco.

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