



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2021-0118]

RIN 1625-AA08

Special Local Regulation; Bay Guardian Exercise, Treasure Island, San Francisco,

CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) in the navigable waters of the San Francisco Bay, near Treasure Island, San Francisco, CA in support of the Bay Guardian 2021 exercise. This special local regulation will temporarily restrict vessel traffic in the vicinity of Treasure Island and prohibit vessels and persons not participating in the exercise from entering the regulated area. The purpose of the exercise is to use radioactive detection equipment in a mock scenario. The exercise will be interrupted, as necessary, to permit the passage of commercial vessel traffic. Exercise participants and non-participants operating within the SLR area shall comply with all instructions given by the on-scene Patrol Commander monitoring the event. This regulation is necessary to provide safety of life on the navigable waters during the exercise, which will be held on March 17, 2021

DATES: This rule is effective from 8 a.m. to 6 p.m. on March 17, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0118 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 Anthony Solares, Waterways Management, U.S. Coast Guard; telephone (415) 399-7443, 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 (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until February 22, 2021. The Coast Guard must establish this safety zone by March 17, 2021 and lacks sufficient time to provide a reasonable comment period and consider those comments before issuing the rule.

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*. Delaying the effective date of this rule would be contrary to public interest because this regulation is needed on March 17, 2021, less than 30 days after the Coast Guard received the final details of the event, in order to keep vessels away from the immediate vicinity of the exercise to ensure the safety of exercise participants, mariners, and transiting vessels.

III. Legal Authority and Need for Rule

The legal basis for the proposed rule is 46 U.S.C. 70041 (previously 33 U.S.C. 1233). Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. The Commander of Coast Guard District 11 has delegated to the Captain of the Port (COTP) San Francisco the responsibility of issuing such regulations.

The regulation establishes a regulated area on the waters on which the Bay Guardian exercise will be held. The regulated area is necessary to ensure the safety of exercise participants and mariners transiting near the exercise area.

IV. Discussion of the Rule

The Bay Guardian 2021 exercise will occur in the navigable waters of San Francisco Bay, near Treasure Island, CA, within an area bounded by a line beginning at position 37° 50' 48.9"N, 122° 23' 45.4"W; thence to position 37° 50' 51.1"N, 122° 22' 14.1"W; thence to position 37° 49' 14.0"N, 122° 21' 18.1"W; thence to position 37° 49' 8.4"N, 122° 21' 28.7"W; thence to position 37° 49' 13.3"N, 122° 21' 48.4"W; thence along Treasure island shoreline to position 37° 49' 22.3"N, 122° 21' 44.4"W, thence along Treasure island shoreline to position 37° 50' 1.1"N, 122° 22' 12.1"W; thence to position 37° 50' 1.1"N, 122° 23' 46"W; and thence to the point of beginning.

This rule will be enforced before, during, and immediately after the event, from 8 a.m. to 6 p.m. on March 17, 2021, or as broadcasted via BNM.

Except for persons or vessels authorized by the Captain of the Port or a designated representative, no vessel may enter or remain in the restricted area. A "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 COTP in enforcement of the restricted area.

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. 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).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the restricted area. Although this rule restricts access to the water of the encompassed area, the effect of this rule will not be significant because the local waterway users will be notified to minimize impact. The vessels desiring to transit through or around the temporary restricted area 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 regulated area 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.

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, Rev. 1, associated implementing instructions, and Environmental Planning 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 a special local regulation of limited size and duration which will be in active use by exercise participant during the 10-hour enforcement period. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1.

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: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T11-049 to read as follows:

§100.T11-049 Special Local Regulation; Bay Guardian Exercise, Treasure Island, San Francisco, CA

(a) *Regulated area.* The regulations in this section apply to the following area: The navigable waters of San Francisco Bay, near Treasure Island, CA, bounded by a line beginning at position 37° 50' 48.9"N, 122° 23' 45.4"W; thence to position 37° 50' 51.1"N, 122° 22' 14.1"W; thence to position 37° 49' 14.0"N, 122° 21' 18.1"W; thence to position 37° 49' 8.4"N, 122° 21' 28.7"W; thence to position 37° 49' 13.3"N, 122° 21' 48.4"W; thence along Treasure island shoreline to position 37° 49' 22.3"N, 122° 21' 44.4"W, thence along Treasure island shoreline to position 37° 50' 1.1"N, 122° 22' 12.1"W; thence to position 37° 50' 1.1"N, 122° 23' 46"W; and thence to the point of beginning.

(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 and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the exercise.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port (COTP) San Francisco or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Command Center at 415-399-3547. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 6 p.m. on March 17, 2021.

Dated: March 09, 2021

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

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