

point 34°28'06" N, 114°21'55" W, thence easterly to a point 34°28'55" N, 114°21'02" W, thence southerly along the shoreline to the point of origin.

(b) *Enforcement dates.* This safety zone will be enforced from 7 a.m. (PDT) to 6 p.m. (PDT), daily, from October 5, 2003 through October 12, 2003. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Coast Guard designated representative.

Dated: September 24, 2003.

**Stephen P. Metruck,**

*Commander, U.S. Coast Guard, Captain of the Port, San Diego.*

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**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-024]

RIN 1625-AA00

#### Safety Zone; San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay, California, off the San Francisco waterfront for a fireworks display in conjunction with the Pier 39 25th Anniversary Celebration sponsored by Pier 39. This safety zone is necessary to provide for the safety of mariners in the vicinity of the fireworks display and for the safety of the vessel, its crew, and technicians working the fireworks launch barge and the pyrotechnics. Persons and vessels are prohibited from entering into or transiting through the safety zone, which will encompass the navigable waters within a 1000-foot radius of the launch platform that will be located approximately 1000 feet off Pier 39, unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 8 p.m. (PDT) on October 4, 2003, to 8:45 p.m. (PDT) on October 4, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03-024] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug L. Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

#### **SUPPLEMENTARY INFORMATION:**

#### **Regulatory Information**

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 an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close the fireworks area and to protect the maritime public from the hazards associated with the fireworks displays, which are intended for public entertainment.

For the same reasons stated above, 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**.

#### **Background and Purpose**

Pier 39 is sponsoring a short fireworks display on October 4, 2003 in conjunction with the Pier 39 25th Anniversary Celebration event. These safety zones are necessary to protect the spectators along with vessels and other property from the hazards associated with the fireworks show. These temporary safety zones will consist of portions of the navigable waters of the San Francisco Bay immediately north of Pier 39. The Coast Guard has granted Pier 39 and Pyro Spectaculars a marine event permit for this event.

#### **Discussion of Rule**

The temporary safety zone consists of the navigable waters of San Francisco Bay within a 1000-foot radius of the launch platform. The launch platform will be located approximately 1000 feet

off Pier 39 in San Francisco, California. Entry into, transit through or anchoring within this safety zone is prohibited, unless authorized by the Captain of the Port or his designated representative.

#### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this safety zone will restrict boating traffic within the San Francisco Bay, the effect of this regulation will not be significant as the safety zone will encompass a small portion of the waterway and will be short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. As discussed above, the safety zone may affect the following entities, some of which may be small entities: the owners and operators of pleasure craft engaged in recreational activities and sightseeing. The safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: vessel traffic can pass safely around the area, vessels engaged in recreational activities and sightseeing have ample space outside of the safety zone to engage in these activities, and this zone will encompass only a small portion of the waterway for a limited period of time in the evening when vessel traffic is low. The maritime public will be advised of this safety zone via public notice to mariners.

#### **Assistance For Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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).

#### 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).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 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 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.

#### Taking of Private Property

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

#### 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.

#### 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.

#### 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.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be

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, 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 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 § 165.T11-096 to read as follows:

#### § 165.T11-096 Safety Zone: San Francisco Bay, San Francisco, California.

(a) *Location.* This temporary safety zone shall include the navigable waters of the San Francisco Bay within a radius of 1,000 feet from a fireworks launch barge located approximately 1000 feet north of Pier 39 in approximate position 37°48'54" N, 122°24'32" W, San Francisco Bay, San Francisco, California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 510-437-3073 or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port 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. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Effective period.* This section becomes effective at 8 p.m. (PDT) on

October 4, 2003, and will terminate at 8:45 p.m. (PDT) on October 4, 2003.

Dated: September 23, 2003.

Gerald M. Swanson,

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

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## POSTAL SERVICE

### 39 CFR Part 230

#### Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

AGENCY: Postal Service.

ACTION: Final rule.

**SUMMARY:** The Postal Service is amending the Code of Federal Regulations to state the rules that govern compliance with subpoenas, summonses, and court orders served on employees of the Office of Inspector General where neither the Postal Service, the United States, nor any other federal agency is a party.

**EFFECTIVE DATE:** October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marta Erceg, Director, Legal Services, Office of Inspector General, at (703) 248-2447.

**SUPPLEMENTARY INFORMATION:** The Postal Service has previously published rules that govern compliance with subpoenas, summonses, and court orders served on Postal Service and Inspection Service employees. This is the first publication of subpoena compliance rules as they apply to Office of Inspector General employees.

#### List of Subjects in 39 CFR Part 230

Administrative practice and procedure.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR as follows:

#### PART 230—OFFICE OF INSPECTOR GENERAL

■ 1. The authority citation for part 230 is revised to read as follows:

Authority: 5 U.S.C. App.3; 39 U.S.C. 401(2) and 1001.

#### Subpart A—General Policy and Authority

■ 2. Sections 230.1 through § 230.5 are designated as new subpart A and a

heading for subpart A is added to read as set forth above.

■ 3. Following Subpart A, add the following new subpart B:

#### Subpart B—Rules Governing Compliance with Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

Sec.

230.10 What do these rules govern?

230.11 What special definitions apply to these rules?

230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?

230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?

230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?

230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?

230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?

230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?

230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?

230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?

230.20 What records will not be released?

230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?

230.22 May another employee be substituted for the employee requested to appear?

230.23 May an Office of Inspector General employee testify as an expert or opinion witness?

230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?

230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?

230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?

230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

#### Subpart B—Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

##### § 230.10 What do these rules govern?

(a) Subpart B governs those situations where an employee of the Office of Inspector General has been summoned, subpoenaed, or given a court order in connection with any federal, state, local court, administrative, or legislative proceeding.

(b) The rules in Subpart B do not apply to:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is named as a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Employees serving as expert witnesses in connection with professional and consultative services under Title 5, Code of Federal Regulations, Part 7001, provided they state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(4) Employees making appearances in their private capacities in proceedings that do not relate to their Postal Service employment, such as traffic accidents or domestic relations matters; and do not involve professional or consultative services;

(5) Situations where the Inspector General or an official designated by the Inspector General determines that the best interests of the public or the Office of Inspector General would be served by an exemption from the regulations.

(c) These rules should be read together with the Freedom of Information Act (FOIA), which provides additional information about access to records.

##### § 230.11 What special definitions apply to these rules?

The following definitions apply to Subpart B:

(a) Authorizing official means the Inspector General or an official designated by the Inspector General to authorize release of documents or permission to testify.

(b) Case or matter means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.