

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2009-0631]

RIN 1625-AA00

**Safety Zone; Hornblower Cruises Fleet Week Fireworks Display, San Francisco Bay, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of San Francisco Bay near San Francisco, CA in support of a Fleet Week fireworks display. This safety zone is necessary to ensure the safety of participants and spectators from the dangers associated with the 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 or his designated representative.

**DATES:** This rule is effective from 8:45 a.m. through 10 p.m., each day, on October 9 and 10, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0631 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0631 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Lieutenant Junior Grade Christopher Hartley, U.S. Coast Guard Sector San Francisco, at (415) 399-7436, or at [Christopher.A.Hartley@uscg.mil](mailto:Christopher.A.Hartley@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final 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 the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the safety zones are necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area.

For the same reasons, the Coast Guard also finds under 5 U.S.C. 553(d)(3) that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose members of the public to the dangers posed by the pyrotechnics used in the fireworks display.

**Background and Purpose**

Hornblower Cruises will sponsor a Fleet Week fireworks display on October 9 and 10, 2009 on the navigable waters of San Francisco Bay, CA. The fireworks displays are meant for entertainment purposes. This safety zone establishes temporary restricted areas on the waters surrounding the fireworks launch sites during loading of the pyrotechnics and during the fireworks displays. These restricted areas around the launch sites are necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks displays.

**Discussion of Rule**

During the setup of the fireworks and until the start of the fireworks displays, the temporary safety zone will be enforced within a radius of 100 feet around the fireworks sites. From 9:30 p.m. until 9:50 p.m., the temporary safety zone will be enforced within a radius of 1,000 feet around the fireworks launch sites.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the fireworks sites while the fireworks are set up, and until the conclusion of the scheduled displays.

Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barges to ensure the safety of participants, spectators, and transiting vessels.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

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.

Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because of the small size and short duration of the zone. Additionally, local waterway users will be able to pass safely around the zone, and will be notified via public Broadcast Notice to Mariners to ensure the zone will result in minimum impact.

**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.

This rule may affect the following entities, some of which are small entities: The owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (1) Vessel traffic can pass safely around the area; (2) vessels engaged in recreational activities and

sightseeing have ample space outside of the affected portion of the areas of San Francisco, CA to engage in these activities; (3) this rule will encompass only a small portion of the waterway for a limited period of time; and (4) the maritime public will be advised in advance of this safety zone via Broadcast 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 offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

#### 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.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because the rule establishes a safety zone.

An environmental analysis checklist and a categorical exclusion determination are 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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 temporary § 165–T11–223 to read as follows:

#### § 165–T11–223 Safety Zone; Hornblower Cruises Fleet Week Fireworks Display, San Francisco Bay, CA

(a) *Location.* The following area is a safety zone: All waters of San Francisco Bay, from surface to bottom, within a 1,000 foot radius of fireworks launch sites that will be located approximately at: 37°47'55.61" N, 122°23'36.03" W; 37°48'41.95" N, 122°24'43.97" W; and, 37°48'38.00" N, 122°24'50.93" W. All coordinates are (NAD 83).

(b) *Enforcement.* During the loading of the fireworks, and until the start of the fireworks displays on October 9 and 10, 2009, this regulation will be enforced within a radius of 100 feet around the fireworks launch sites. From 9:30 p.m. until 9:50 p.m. on October 9 and 10, 2009, this regulation will be enforced within a radius of 1,000 feet around the fireworks launch sites.

(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 San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zones on VHF-16 or through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Effective period.* This section is effective from 8:45 a.m. through 10 p.m. on October 9 and 8:45 a.m. through 10 p.m. on October 10, 2009.

Dated: July 16, 2009.

**P.M. Gugg,**

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

[FR Doc. E9-18494 Filed 8-3-09; 8:45 am]

**BILLING CODE 4910-15-P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 351

[Docket No. RM 2009-5]

#### Proceedings of the Copyright Royalty Board; Remand

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Copyright Royalty Board is issuing an interim regulation to amend its procedural regulations to include a provision governing remands of final determinations pursuant to the Copyright Act, which sets forth in significant detail the procedural structure to be followed by the Copyright Royalty Judges in making determinations to distribute royalty fees and establish royalty rates and terms under the various statutory licenses of the Copyright Act. The Judges have adopted regulations governing the conduct of these proceedings.

**DATES:** *Effective Date:* August 4, 2009.

Comments are due no later than September 3, 2009.

**ADDRESSES:** Comments may be sent electronically to [crb@loc.gov](mailto:crb@loc.gov). In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977. If hand delivered by a private party, comments must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by commercial courier, comments must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000.

**FOR FURTHER INFORMATION CONTACT:**

Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707-7658 or e-mail at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** Section 803 of the Copyright Act, 17 U.S.C., sets forth in significant detail the procedural structure to be followed by the Copyright Royalty Judges in making determinations to distribute royalty fees and establish royalty rates and terms under the various statutory licenses of the Copyright Act. Pursuant to the authority granted us in 17 U.S.C. 803(b)(6), the Judges have adopted

regulations, set forth in Subchapter B, Chapter III of title 37 of the Code of Federal Regulations, governing the conduct of these proceedings. Every proceeding to distribute royalty fees or establish royalty rates and terms results in a final determination of the Judges that is reviewable by the United States Court of Appeals for the District of Columbia Circuit, 17 U.S.C. 803(d). The Court of Appeals may, inter alia, vacate a determination or portion thereof, and remand to the Judges for further action. Until today, the Judges did not have any procedural regulations in place for handling the disposition of a remand.

On July 7, 2009, and again on July 10, 2009, the Court of Appeals issued decisions reviewing the first two royalty rate proceedings conducted under the Copyright Royalty Judges system. See *SoundExchange, Inc. v. Librarian of Congress*, No. 08-1078, 2009 WL 1930180 (D.C. Cir. July 7, 2009); *Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, No. 07-1123, 07-1168, 07-1172, 07-1174, 07-1177, 07-1178, 2009 WL 1978453 (D.C. Cir. July 10, 2009). Although the Court affirmed the determinations of the Judges in the main, each case remanded an issue for further consideration by the Judges. Lacking any regulations governing the procedures for disposing of remands, the adoption of today’s interim regulation is necessary for these and any future cases.

The interim regulation provides that, within 45 days of the date of issuance of the mandate of a decision of the Court of Appeals remanding a determination of the Judges, the parties to the proceeding shall submit, in writing, their proposals setting forth the procedures and schedule to be followed in addressing the remand. The interim rule is purposely flexible to permit the Judges, and the parties, to address the particulars of each remand before the Judges in an effort to promote administrative efficiency and reduce costs.

Interested parties are encouraged to offer comments as to the interim regulation as well as propose any additional procedures or regulations necessary for the handling of remands.

#### List of Subjects in 37 CFR Part 351

Administrative practice and procedure, Copyright.

#### Interim Regulation

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are amending part 351 of 37 CFR as follows: