

a signal to stop. Vessels or persons signaled shall stop and shall comply with the orders of the patrol vessels. Failure to do so may result in the expulsion from the area, citation for failure to comply, or both.

(4) Any spectator vessel may anchor outside the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

Dated: March 10, 2009.

**Gail P. Kulisch,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0278]

RIN 1625-AA00

#### Safety Zone; Waters Surrounding Berth 7 at the Port of Oakland, San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay, CA at Berth 7 at the Port of Oakland during the offloading of the ZHEN HUA 18. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port or his designated representative.

**DATES:** This rule is effective from noon on April 14, 2009, through 11:59 p.m. on April 24, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0278 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-2009-0278 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 Simone Mausz, U.S. Coast Guard Sector San Francisco, at (415) 399-7442. 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 offloading of heavy equipment onboard this vessel, the safety zone is necessary to provide for the safety of other vessels transiting the area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the offload.

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**. The Coast Guard was only recently notified of the safety concerns, and any delay in the effective date of this rule would expose mariners to the dangers posed by the equipment being offloaded.

##### Background and Purpose

The M/V ZHEN HUA 18 will be delivering heavy equipment and materials for use in the construction of the San Francisco-Oakland Bay Bridge project. This rule is necessary for the safety of the public and vessels transiting to other berths during the offload of this cargo. This rule prohibits entry of any vessel or person inside the safety zone without specific authorization from the Captain of the Port or his designated representative.

##### Discussion of Rule

This safety zone will remain in effect from noon on April 14, 2009, through 11:59 p.m. April 24, 2009, and includes all waters extending from the surface area to the sea floor within approximately 50 yards seaward from the moored vessel and encompasses all

waters in San Francisco Bay within an area created by connecting the following geographical positions: From latitude 37°49’08” N and longitude 122°19’07” W; thence to latitude 37°49’05” N and longitude 122°19’30” W; thence to latitude 37°49’15” N and longitude 122°18’52” W; thence to latitude 37°49’18” N and longitude 122°18’56” W; thence along the shoreline back to the beginning point.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the berth while the equipment is offloaded. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area.

##### 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 zone, the effect of this rule will not be significant because vessels will be able to safely transit around the area and the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

##### 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 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: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected portion of the San Francisco Bay to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) 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 M16475.1D, 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. This rule involves establishing a safety zone. An environmental analysis checklist and a 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, and 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–183 to read as follows:

#### § 165.T11–183 Safety Zone; Waters surrounding Berth 7 at the Port of Oakland, San Francisco Bay, California.

(a) *Location.* This temporary safety zone is established for the waters of the San Francisco Bay. It includes all waters

extending from the surface area to the sea floor within approximately 50 yards seaward from the moored vessel M/V ZHEN HUA 18 and encompasses all waters in an area created by connecting the following geographical positions:

| Latitude    | Longitude    |
|-------------|--------------|
| 37°49'08" N | 122°19'07" W |
| 37°49'05" N | 122°19'30" W |
| 37°49'15" N | 122°18'52" W |
| 37°49'18" N | 122°18'56" W |

and along the shoreline back to the beginning point. These coordinates are based upon 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 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 the COTP's designated representative.

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

(d) *Effective period.* This section is effective from 12 p.m. on April 14, 2009, through 11:59 p.m. on April 24, 2009.

Dated: April 13, 2009.

**P.M. Gugg,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0222]

RIN 1625-AA00

#### Safety Zone; April to May Naval Underwater Detonation; Northwest Harbor, San Clemente Island, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the navigable waters of the Northwest Harbor of San Clemente Island in support of the Naval Underwater Detonation. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** This rule is effective from April 1, 2009 through June 1, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0222 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-2009-0222 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 two locations: 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 or e-mail Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7262, e-mail [Kristen.A.Beer@uscg.mil](mailto:Kristen.A.Beer@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 immediate action is necessary to ensure the safety of commercial and recreational vehicles in the vicinity of the Naval Underwater Detonation on the dates and times this rule will be in effect and delay would be contrary to the public interest.

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 would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

##### Background and Purpose

The Officer in Charge (OIC) of the Southern California Offshore Range will be conducting intermittent training involving the detonation of military grade explosives underwater throughout April and May 2009. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity.

##### Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from April 1, 2009 through June 1, 2009. The limits of the safety zone will be the navigable waters of the Northwest Harbor of San Clemente Island bounded by the following coordinates: 33.02°06" N, 118.35°36" W; 33.02°00" N, 118.34°36" W; thence along San Clemente shoreline to 33.02°06" N, 118.35°36" W. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activities. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses