

Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843-740-7050, or a designated representative via VHF radio on channel 16, to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast notice to mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 9 p.m. until 10:30 p.m. on May 13, 2011.

Dated: April 26, 2011.

**Michael F. White Jr.,**  
Captain, U.S. Coast Guard, Captain of the Port Charleston.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0324]

RIN 1625-AA00

#### Safety Zone; Coast Guard Use of Force Training Exercises, San Pablo Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard will establish a safety zone in San Pablo Bay for Coast Guard Use of Force Training exercises. This safety zone will be established to ensure the safety of the public and participating crews from potential hazards associated with fast-moving Coast Guard small boats and/or helicopters taking part in the exercise. Unauthorized persons or vessels will be prohibited from entering into, transiting

through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective June 6, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0324 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0324 in the "Keyword" box, and then clicking "Search." This material is 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 rule, call or e-mail Lieutenant Simone Mausz, U.S. Coast Guard Sector San Francisco; telephone 415-399-7443, e-mail [D11-PF-MarineEvents@uscg.mil](mailto:D11-PF-MarineEvents@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

On November 6, 2009, we published a Notice of Proposed Rulemaking (NPRM) entitled Safety Zone; Coast Guard Use of Force Training Exercises, San Pablo Bay, CA in the **Federal Register** (74 FR 214). We received four comments on the proposed rule from the San Francisco Bay Conservation and Development Commission (BCDC), Audubon California, Beth Huning, and San Francisco Joint Venture. No public meetings were requested or held as part of this rulemaking.

#### Basis and Purpose

The U.S. Coast Guard will establish a safety zone in the navigable waters of the San Pablo Bay, California that will apply to the navigable waters encompassing an area beginning at position 38°01'44" N, 122°27'06" W; 38°04'36" N, 122°22'06" W; 38°00'35" N, 122°26'07" W; 38°03'00" N, 122°20'20" W (NAD 83) and back to the starting point. U.S. Coast Guard Maritime Safety and Security Team (MSST) San Francisco, U.S. Coast Guard Air Station San Francisco, and various Coast Guard small boat stations will be conducting Use of Force training runs in the waters of San Pablo Bay. The exercises are designed to train and test Coast Guard personnel in the decision-making

processes necessary to safely and effectively employ Use of Force from a small boat or helicopter during Homeland Security operations. The training will generally involve the use of several Coast Guard small boats and/or a helicopter to intercept fast-moving, evasive target vessels on the water. The small boat and helicopter crews will fire weapons at the target vessels using blank ammunition and catch bags to ensure that cartridges and other debris do not fall to the water. This safety zone is issued to establish a restricted area in San Pablo Bay around the training site.

#### Background

The CG's primary missions include homeland security, search and rescue, and drug and environmental enforcement, and it is in the public interest for CG personnel to be trained and ready to serve the public at all times. Among the homeland security missions is port security training to develop the tactical qualifications and expertise necessary to fulfill this mission requirement. The small boats that conduct port security operations throughout San Francisco Bay are unable to conduct such training offshore due to conditions that often exceed the assets' operational parameters, frequent visibility restrictions, and unsuitability for the offshore environment. The San Pablo Bay safety zone provides an ideal location for the Coast Guard to conduct Use of Force training since it is at least 1.5 miles away from shore as well as a safe distance from shipping lanes, wildlife refuges, water trails and access points.

#### Discussion of Comments and Changes

The CG conducted Use of Force training at this very same location in San Pablo Bay on average twice a month in 2009. The training went on as planned, without incidents or interference with public access, except for one occasion where the CG rescheduled one of its training sessions to avoid potential interference with a San Francisco Flyway Festival bird-watching group.

On July 29, 2009, the CG sent an email to various potentially interested parties including BCDC informing those parties of our intention to prepare a Notice of Proposed Rulemaking and a Categorical Exclusion Determination under NEPA for the establishment of a safety zone for Use of Force training in San Pablo Bay. In January 2010, in a letter to the CG, the San Francisco Bay Conservation and Development Commission raised concerns about the possible "effect on both motorized and non-motorized recreational boat traffic,

and on wildlife habitat that San Francisco Bay supports, especially the habitat of both migratory and non-migratory waterfowl as well as that of the wide variety of fish species” and requested the CG prepare a Consistency Determination or Negative Determination. In December and January, the CG received comments from the San Francisco Bay Joint Venture and Audubon California that addressed possible disturbances to waterfowl and referenced a study by the USGS confirming foraging areas in San Pablo Bay are used by diving ducks. In the Consistency Determination, the USGS was contacted and determined that the proposed area is too deep to affect any shorebirds. Additionally, a response from FWS reveals that the proposed safety zone is not expected to have any impacts on any of the endangered species in the San Pablo Bay that are under the jurisdiction of the FWS.

In December 2010, the CG completed and sent the Consistency Determination to BCDC that determined the proposed safety zone and AUF training in San Pablo Bay is consistent to the maximum extent practicable with the enforceable policies of BCDC’s San Francisco Bay Plan. BCDC concurred with this determination in December 2010 and determined it was “complete” and acceptable.

### **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.

### **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.

### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM 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.

### **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 (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.

### **Taking of Private Property**

This rule will not cause 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 023–01 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 that 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. The rule involves establishing 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, 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; 50 U.S.C. 191, 195; 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 § 165.1184 to read as follows:

#### § 165-1184 Safety Zone; Coast Guard Use of Force Training Exercises, San Pablo Bay, CA

(a) *Location.* This safety zone will apply to the navigable waters in the San Pablo Bay, and will encompass an area beginning at position 38°01'44" N, 122°27'06" W; 38°04'36" N, 122°22'06" W; 38°00'35" N, 122°26'07" W; 38°03'00" N, 122°20'20" W (NAD 83) and back to the starting point.

(b) *Enforcement.* The Coast Guard will notify the public via a Broadcast Notice to Mariners prior to the activation of this safety zone. The safety zone will be activated on average two times per month, but could be activated up to six times per month. It will be in effect for approximately three hours from 9 a.m. to 11:59 p.m. If the exercises conclude prior to the scheduled termination time, the Coast Guard will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners. Persons and vessels may also contact the Coast Guard to determine the status of the safety zone on VHF-16 or the 24-hour Command Center via telephone at (415) 399-3547.

(c) *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.

(d) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within the 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 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 the 24-hour Command Center via telephone at (415) 399-3547.

Dated: March 31, 2011.

**Cynthia L. Stowe,**

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

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**BILLING CODE 9110-04-P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Medicare & Medicaid Services

#### 42 CFR Part 482 and 485

[CMS-3227-F]

RIN 0938-AQ05

#### Medicare and Medicaid Programs: Changes Affecting Hospital and Critical Access Hospital Conditions of Participation: Telemedicine Credentialing and Privileging

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule will revise the conditions of participation (CoPs) for both hospitals and critical access hospitals (CAHs). The final rule will implement a new credentialing and privileging process for physicians and practitioners providing telemedicine services. Currently, a hospital or CAH receiving telemedicine services must go through a burdensome credentialing and privileging process for each physician and practitioner who will be providing telemedicine services to its patients.

This final rule will remove this undue hardship and financial burden.

**DATES:** *Effective Date:* These regulations are effective on July 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** CDR Scott Cooper, USPHS, (410) 786-9465. Jeannie Miller, (410) 786-3164.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

This final rule reflects the Centers for Medicare and Medicaid Services' commitment to the general principles of the President's Executive Order released January 18, 2011, entitled "Improving Regulation and Regulatory Review." The rule revises the conditions of participation (CoPs) for both hospitals and critical access hospitals (CAHs) to: (1) Make current Federal requirements more flexible for rural and/or small hospitals and for CAHs; and (2) encourage innovative approaches to patient-service delivery.

CMS regulations currently require a hospital to have a credentialing and privileging process for all physicians and practitioners providing services to its patients. The regulations require a hospital's governing body to appoint all practitioners to its hospital medical staff and to grant privileges using the recommendations of its medical staff. In turn, the hospital medical staff must use a credentialing and privileging process, provided for in CMS regulations, to make its recommendations. CMS requirements do not take into account those practitioners providing only telemedicine services to patients. Consequently, hospitals apply the credentialing and privileging requirements as if all practitioners were onsite. This traditional and limited approach fails to embrace new methods and technologies for service delivery that may improve patient access to high quality care.

This final rule will permit hospitals and CAHs to implement a new credentialing and privileging process for physicians and practitioners providing telemedicine services. The removal of unnecessary barriers to the use of telemedicine may enable patients to receive medically necessary interventions in a more timely manner. It may enhance patient follow-up in the management of chronic disease conditions. These revisions will provide more flexibility to small hospitals and CAHs in rural areas and regions with a limited supply of primary care and specialized providers. In certain instances, telemedicine may be a cost-effective alternative to traditional service delivery approaches and, most