

satisfaction of the Commissioner that the manner in which it will administer the deemed IRA will be consistent with the requirements of section 408. These final regulations also provide special rules regarding the application of § 1.408-2(e) to governmental units. These final regulations are adopted without substantive change from the proposed and temporary regulations. These final regulations are applicable for written applications made on or after June 18, 2007. The rules in this section also may be relied on for applications submitted on or after August 1, 2003 (or such earlier application as the Commissioner deems appropriate) and before June 18, 2007.

### Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Linda L. Conway of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.408-2(e)(8) is revised to read as follows:

#### § 1.408-2 Individual retirement accounts.

\* \* \* \* \*

(e) \* \* \*  
(8) *Special rules for governmental units*—(i) *In general.* A governmental unit that seeks to qualify as a nonbank trustee of a deemed IRA that is part of its qualified employer plan must demonstrate to the satisfaction of the Commissioner that it is able to administer the trust in a manner that is consistent with the requirements of section 408. The demonstration must be made by written application to the Commissioner. Notwithstanding the requirement of paragraph (e)(1) of this section that a person must demonstrate by written application that the requirements of paragraphs (e)(2) through (e)(6) of this section will be met in order to qualify as a nonbank trustee, a governmental unit that maintains a plan qualified under section 401(a), 403(a), 403(b) or 457 need not demonstrate that all of these requirements will be met with respect to any individual retirement accounts maintained by that governmental unit pursuant to section 408(q). For example, a governmental unit need not demonstrate that it satisfies the net worth requirements of paragraph (e)(3)(ii) of this section if it demonstrates instead that it possesses taxing authority under applicable law. The Commissioner, in his discretion, may exempt a governmental unit from certain other requirements upon a showing that the governmental unit is able to administer the deemed IRAs in the best interest of the participants. Moreover, in determining whether a governmental unit satisfies the other requirements of paragraphs (e)(2) through (e)(6) of this section, the Commissioner may apply the requirements in a manner that is consistent with the applicant's status as a governmental unit.

(ii) *Governmental unit.* For purposes of this special rule, the term *governmental unit* means a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state.

(iii) *Additional rules.* The Commissioner may in revenue rulings, notices, or other guidance of general applicability provide additional rules for governmental units seeking approval as nonbank trustees.

(iv) *Effective/applicability date.* This section is applicable for written applications made on or after June 18, 2007. The rules in this section also may be relied on for applications submitted on or after August 1, 2003 (or such earlier application as the Commissioner

deems appropriate) and before June 18, 2007.

#### § 1.408-2T [Removed]

■ **Par. 3.** Section 1.408-2T is removed.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved:

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 07-025]

RIN 1625-AA00

#### Safety Zone; BART Transbay Tube Seismic Upgrade; San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a moving temporary safety zone in the navigable waters of San Francisco Bay, California, during geotechnical borings for a seismic upgrade of the Bay Area Rapid Transit (BART) Transbay tube. The borings will require placement of a drilling vessel at test sites along the BART Transbay tube. The safety zone will surround the vessel and move with the vessel as it conducts the tests at eighteen sites along the BART Transbay tube. This safety zone is necessary to protect persons and vessels from hazards, injury, and damage associated with the geotechnical borings. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

**DATES:** This rule is effective from May 30, 2007 through June 25, 2007.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP San Francisco Bay 07-025 and are available for inspection or copying at the Waterways Safety Branch of Sector San Francisco, Yerba Buena Island, Bldg. 278, San Francisco, California 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ensign Erin Bastick, U.S. Coast Guard

Sector San Francisco, at (415) 556-2950 or Sector San Francisco 24 hour Command Center at (415) 399-3547.

**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. The dates for the geotechnical borings along the Transbay tube were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the borings would commence before the rulemaking process could be completed. Any delay in implementing this rule is contrary to the public interest since immediate action is necessary in order to protect the maritime public from the hazards associated with the vibro penetration testing.

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 dates for the geotechnical borings along the Transbay tube were not finalized and presented to the Coast Guard in time to publish this rule 30 days prior to its effective date. As such, the borings would commence before the rulemaking process could be completed. Delay in the effective date of this rule would expose the mariners and waterways users to undue hazards associated with the geotechnical borings.

**Background and Purpose**

Bay Area Rapid Transit has contracted Gregg Drilling & Testing, to conduct BART marine demonstration tests in support of their earthquake safety efforts. They will be conducting geotechnical borings for future seismic upgrades of the BART Transbay tube. The scope of the work will involve eighteen separate anchor spread locations, required to carry out the thirty-four geotechnical borings, located along the BART tube in the San Francisco Bay. The scope of work for the entire BART seismic upgrade project involves four primary activities carried out on the water. These activities include vibro penetration tests, vibro ground improvement, drilling, sampling and sonic borings.

The Gregg Drilling & Testing work will involve the drilling portion of the BART seismic upgrade project. Gregg Drilling & Testing will be deploying the vessel QUIN DELTA which is 120 feet long and 30 feet wide, with a drilling apparatus attached to its hull. The vessel QUIN DELTA will be located over the tube alignment to perform

drilling. The drilling will penetrate the sea floor at a depth of five feet. The contents recovered will be collected onto the vessel and further analyzed offsite.

**Discussion of Rule**

This safety zone will encompass the navigable waters from the surface to the sea floor, located in the San Francisco Bay, encompassing a circular safety zone with a 300-yard radius extending from the drilling platform, vessel QUIN DELTA. The vessel QUIN DELTA will transit and conduct testing along the BART Transbay tube between two points: 37°47'44.55" N Latitude by 122°23'28.34" W Longitude at the western extreme and 37°48'31.29" N Latitude by 122°20'17.12" W Longitude on the eastern extreme. This area between the two points will be used to maneuver and anchor the vessel QUIN DELTA as it conducts the geotechnical borings from May 30, 2007 through June 25, 2007. The BART Project manager coordinated the boring locations with the local Bar Pilots and the Vessel Traffic Service to ensure the testing would result in minimum impact to vessel traffic. This moving safety zone around the drilling Barge QUIN DELTA is necessary to protect persons and vessels from hazards, injury, and damage associated with the geotechnical borings.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section may be subject to both criminal and civil penalties.

**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.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users have been contacted to ensure the closure will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities. Not only is the safety zone small in size, but there will

be ample space to navigate around the safety zone as well.

**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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the San Francisco Bay from May 30, 2007 through June 25, 2007. Although this regulation prevents traffic from transiting a portion of San Francisco Bay during the testing, the effect of this regulation will not be significant because small vessels will be able to transit around the regulated area. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

Small entities and the maritime public will also be advised of this safety zone via public broadcast notice to mariners. In addition, vessels will be able to pass through the zone on a case-by-case basis. Therefore, the economic impact of this waterway closure is not expected to be significant.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by this safety zone. This safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the safety zone to engage in these activities.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not affect 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 Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, 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 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. Paragraph (34)(g) is applicable because this rule establishes 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 record keeping 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, 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 § 165.T11-197, to read as follows:

#### § 165.T11-197 Safety Zone; San Francisco Bay, California.

(a) *Location.* This safety zone will encompass the navigable waters from the surface to the sea floor, in the San Francisco Bay, and its limits will encompass a circular safety zone with a radius of 300-yards extending from and around the drilling vessel QUIN DELTA. This safety zone will move and continue to extend 300-yards from the vessel QUIN DELTA while it operates along the charted BART Transbay tube between the following two points: 37°47'44.55" N Latitude by 122°23'28.34" W Longitude at the western extreme and 37°48'31.29" N Latitude by 122°20'17.12" W Longitude on the eastern extreme.

(b) *Effective dates.* This rule is effective from May 30, 2007 through June 25, 2007. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port (COTP) will cease enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons is prohibited, unless specifically authorized by the COTP San Francisco, or his designated representative.

(d) *Enforcement.* All persons and vessels shall comply with the

instructions of the Coast Guard COTP or his designated representative. The COTP's designated representative can be comprised of 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. The U.S. Coast Guard may be assisted in the patrol and enforcement of these two safety zones by local law enforcement as necessary.

Dated: May 29, 2007.

**W.J. Uberti,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 07-016]

RIN 1625-AA00

#### **Safety Zone; City of San Francisco Fourth of July Fireworks Display, 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 San Francisco Bay for the loading, transport, and launching of fireworks to celebrate Independence Day. This safety zone is established to ensure the safety of participants and spectators. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative. **DATES:** This rule is effective from 9 a.m. on July 3, 2007 to 10 p.m. on July 4, 2007.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket COTP San Francisco Bay 07-016 and are available for inspection or copying at Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California, 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ensign Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 556-2950 ext. 136.

## 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. Because of the dangers posed by the pyrotechnics used in this fireworks display, safety zones are necessary to provide for the safety of event participants, spectators, and vessels transiting the event area. Because of these safety concerns, it is in the public interest to have these regulations in effect during the event.

For the same reasons, the Coast Guard finds that good cause exists under 5 U.S.C. 553(d)(3) 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 mariners to the dangers posed by the pyrotechnics used in this fireworks display.

### Background and Purpose

The City of San Francisco is sponsoring a fireworks display on July 4, 2007 in the waters of San Francisco Bay near Pier 39. The fireworks display is meant for entertainment purposes in celebration of Independence Day. This safety zone is being issued to establish a temporary regulated area in San Francisco around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This safety zone around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

### Discussion of Rule

The Coast Guard is establishing a temporary safety zone on specified waters of San Francisco Bay near Piers 39 and 50. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the safety zone will apply to the navigable waters around and under the fireworks barge within a radius of 100 feet. Fifteen minutes prior to and during the twenty-five minute fireworks display, the area to which this safety zone applies to will increase in size to encompass the

navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 3, 2007, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place on July 4, 2007. During the fireworks display, scheduled to commence at approximately 9:30 p.m., the fireworks barge will be located approximately 1,000 feet off of Pier 39 in position 37°48.71' N, 122°24.46' W.

The effect of the temporary safety zone will be to restrict general navigation in the vicinity of the fireworks barge while the fireworks are loaded at Pier 50, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the safety zone. This safety zone is needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

### 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.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via publicly broadcasted 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 entities. This rule