

**SUMMARY:** The Coast Guard is canceling the temporary deviation concerning the Florida East Coast (FEC) Railroad Bridge, mile 7.41, and the NW Dixie Highway Bridge, mile 7.5, across the Okeechobee Waterway (OWW), at Stuart, Florida. The cancellation will allow the Coast Guard to review and adjudicate the comments posted to determine whether this temporary deviation would meet the safe and reasonable needs of navigation while taking into consideration competing modes of transportation.

**DATES:** The temporary deviation published on June 8, 2023, 88 FR 37470, is cancelled as of August 11, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG-2022-0222) in the "SEARCH" box and click "SEARCH". In the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this cancellation, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone 305-415-6740, email [Jennifer.N.Zercher@uscg.mil](mailto:Jennifer.N.Zercher@uscg.mil).

**SUPPLEMENTARY INFORMATION:** On June 8, 2023, we published a temporary deviation entitled "Drawbridge Operation Regulation; Okeechobee Waterway, Stuart, FL" in the **Federal Register** (88 FR 37470). The temporary deviation concerned the anticipated significant increase in railway activity across the FEC Railroad Bridge and the anticipated negative impact on safe and reasonable navigation under the current operating regulation. Given this concern, the Coast Guard issued a temporary deviation to the FEC Railroad Bridge and the adjacent NW Dixie Highway Bridge to allow the drawbridges to operate in concert and on a more predictable schedule. This action was taken to assist the Coast Guard in determining an operating schedule that would meet the safe and reasonable needs of navigation, taking into consideration other modes of transportation. This deviation from the operating regulations was authorized pursuant to 33 CFR 117.35(a).

This temporary deviation is being cancelled to allow the Coast Guard to review and adjudicate the comments posted to determine whether this temporary deviation would meet the safe and reasonable needs of navigation while taking into consideration competing modes of transportation. If we determine this temporary deviation was not effective, a second temporary

deviation will be published in the **Federal Register** to test an alternate operating schedule. The NW Dixie Hwy Bridge has been removed from this docket to allow the Coast Guard to commence separate rulemaking for the highway bridge to operate on demand. In accordance with 33 CFR 117.35(e), the FEC Railroad Bridge must return to its regular operating schedule immediately upon the cancellation date of this deviation.

Dated: August 4, 2023.

**Randall D. Overton,**

*Director, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 2023-17413 Filed 8-10-23; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2023-0623]

RIN 1625-AA00

#### Safety Zone; Coast Guard Island, Alameda, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all waters of the Alameda Estuary, from surface to bottom, within 250 feet of the pier along the southwest side of Coast Guard Island in support of a munitions transfer on August 13, 2023. The safety zone is necessary to protect personnel, vessels, and the marine environment from the dangers associated with live munitions. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Francisco.

**DATES:** This rule is effective from 8 a.m. through 1 p.m. on August 13, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0623 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Helen Oh, Sector San Francisco Waterways Safety Management, U.S. Coast Guard; telephone 415-399-7405, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of proposed rulemaking

§ Section

U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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 munitions must be transferred for operational readiness. It is impracticable to publish an NPRM because we must establish this safety zone by August 13, 2023.

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 of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the munitions transfer near Alameda, CA beginning August 13, 2023.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the munitions transfer starting August 13, 2023, will be a safety concern for anyone within a 250-foot radius of the pier along the southwest side of Coast Guard Island. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the munitions transfer.

## IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. until 1 p.m. on August 13, 2023. The safety zone will cover all waters of the Alameda Estuary, from surface to bottom, within 250 feet of the pier along the southwest side of Coast Guard Island. The safety zone is necessary to ensure the safety of people, vessels, and the marine environment for

the duration of the munitions transfer. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the Alameda Estuary for only five hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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.

### E. 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.

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that 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 involves a safety zone lasting only five hours that will prohibit entry within 250 feet of the pier along the southwest side of Coast Guard Island. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### 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:** 46 U.S.C. 70034, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T11–136 to read as follows:

**§ 165.T11–136 Safety Zone; Coast Guard Island, Alameda, CA.**

(a) *Location.* The following area is a safety zone: All waters of the Alameda Estuary, from surface to bottom, within 250 feet of the pier along the southwest side of Coast Guard Island.

(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, or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) 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 in the safety zone must comply with all lawful orders or 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–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(c) *Enforcement period.* This section will be enforced from 8 a.m. to 1 p.m. on August 13, 2023.

Dated: August 3, 2023.

**Taylor Q. Lam,**

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

[FR Doc. 2023–17269 Filed 8–10–23; 8:45 am]

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**LIBRARY OF CONGRESS****Copyright Office****37 CFR Parts 201 and 205**

[Docket No. 2023–1]

**Ex Parte Communications**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule

**SUMMARY:** The U.S. Copyright Office is issuing a final rule establishing procedures governing *ex parte* communications with the Office. This final rule adopts regulatory language set forth in the Office’s February 2023 notice of proposed rulemaking with

some modifications in response to public comments. The rule defines *ex parte* communications, provides instructions on how to request an *ex parte* meeting, sets forth the parties’ responsibilities after an *ex parte* meeting, and explains how non-compliant communications will be treated.

**DATES:** Effective September 11, 2023.

**FOR FURTHER INFORMATION CONTACT:** Rhea Efthimiadis, Assistant to the General Counsel, by email at *mefth@copyright.gov*, or Melinda Kern, Attorney-Advisor, by email at *mkern@copyright.gov*, or telephone at 202–707–8350.

**SUPPLEMENTARY INFORMATION:****I. Background**

On February 17, 2023, the Office published a notice of proposed rulemaking (“NPRM”) proposing new regulations governing *ex parte* communications with the Office in informal rulemakings.<sup>1</sup> Specifically, the Office proposed codifying its existing policies for *ex parte* communications used in prior rulemakings. To aid in drafting the NPRM, the Office reviewed other agencies’ comparable regulations and the Administrative Conference of the United States’ recommendations.<sup>2</sup>

The proposed regulations defined which communications with the Office should be considered “*ex parte* communications,” as well as which communications fall outside that definition’s scope. The NPRM also described the process to request an *ex parte* meeting with the Office. It provided that, after an *ex parte* meeting, parties must submit written summaries of the meeting and proposed a deadline for doing so. It stated that all meeting summaries will be made publicly available on the Office’s website. Finally, the NPRM described what communications related to informal rulemaking are impermissible, how the Office will treat such communications, and the steps that Office employees must follow if they receive such communications.

The Office sought public input concerning the proposed rule and received six comments. Commenters generally supported the rule and noted the value of *ex parte* communications in the rulemaking process,<sup>3</sup> though some

suggested various amendments.<sup>4</sup> Having reviewed and carefully considered these comments, the Office now issues a final rule that largely adopts the proposed rule, with some modifications made in response to the submitted comments.

**II. Final Rule****A. Definition of Ex Parte Meetings**

The NPRM proposed that “*ex parte* communications” include only communications to the Office on substantive issues concerning an “ongoing rulemaking.”<sup>5</sup> The Office received two comments requesting clarification on when a communication would fall within the scope of the *ex parte* communication rule.<sup>6</sup> The Digital Licensee Coordinator (“DLC”) suggested that the Office revise the proposed rule to broaden its application to communications occurring after the publication of a notification (or notice) of inquiry (“NOI”).<sup>7</sup> The DLC noted that “in their experience, Copyright Office rulemaking often commences not with an NPRM but with a Notification of Inquiry.”<sup>8</sup> Spotify echoed the DLC’s suggestion.<sup>9</sup>

The Office agrees with the suggested change and finds that it is consistent with the goal that the *ex parte* communications process “foster[ ] a complete and transparent rulemaking record.”<sup>10</sup> Accordingly, the final rule clarifies that *ex parte* communications include those communications that occur after the commencement of a rulemaking, whether the rulemaking process begins with the publication of

(“NCTA”) Comment at 1; National Music Publishers’ Association (“NMPA”) Comment at 1; Spotify Comment at 1. The Office also received a comment from Harvey Jearld Johnson Jr. See Harvey Jearld Johnson Jr Comment at 1.

<sup>4</sup> Authors Alliance Comment at 2; DLC Comment at 1; NCTA Comment at 1; NMPA Comment at 1; Spotify Comment at 1.

<sup>5</sup> 88 FR 10248, 10252 (Feb. 17, 2023).

<sup>6</sup> DLC Comment at 3; Spotify Comment at 1.

<sup>7</sup> DLC Comment at 3. An NOI is an official document that provides or requests information, but is not a proposed or final rule, *i.e.*, it cannot amend the Code of Federal Regulations. See 1 CFR 5.9(d) (also stating that an NOI cannot be an Executive order or Presidential proclamation). The Office has used NOIs to announce studies or public consultations, or to request public input in advance of issuing an NPRM. See, e.g., 86 FR 72638 (Dec. 22, 2021) (announcing public consultation on technical measures); 85 FR 34252 (June 3, 2020) (announcing sovereign immunity study); 84 FR 49966 (Sept. 24, 2019) (requesting public comments on implementing title I of the Music Modernization Act).

<sup>8</sup> DLC Comment at 3 (citing 88 FR 11398 (Feb. 23, 2023) (notification of inquiry on Fees for Late Royalty Payments Under the Music Modernization Act)).

<sup>9</sup> Spotify Comment at 1.

<sup>10</sup> 88 FR 10248, 10249 (Feb. 17, 2023).

<sup>1</sup> 88 FR 10248 (Feb. 17, 2023).

<sup>2</sup> 79 FR 35988, 35993 (June 25, 2014) (reflecting Administrative Conference of the United States Recommendation 2014–4, “Ex Parte” Communications in Informal Rulemaking).

<sup>3</sup> Authors Alliance Comment at 1; Digital Licensee Coordinator (“DLC”) Comment at 1; NCTA—The Internet & Television Association