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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2014-0250]

RIN 1625-AA08

Special Local Regulation; Jones Beach Air Show; Atlantic Ocean,  
Sloop Channel through East Bay, and Zach's Bay; Wantagh, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary special local regulation on the navigable waters of the Atlantic Ocean, Sloop Channel through East Bay and Zach's Bay near Jones Beach State Park in Wantagh, NY for the Jones Beach Air Show. This action is necessary to provide for the safety of life of event participants, spectators, and other waterway users during this event. The special local regulation will facilitate public notification of the event and provide protective measures for the maritime public and event participants from the hazards associated with the Jones Beach Air Show. Entering into, transiting through, remaining, or anchoring within these regulated areas would be prohibited unless authorized by the captain of the Port (COTP) Sector Long Island Sound.

DATES: This rule is effective from May 23, 2014 to May 25, 2014.

This rule will be enforced from 9 a.m. to 3:30 p.m. on May 23, 2014, and from 9 a.m. to 9 p.m. beginning May 24, 2014 through May 25, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0250]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468-4559, [Scott.A.Baumgartner@uscg.mil](mailto:Scott.A.Baumgartner@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register

A. Regulatory History and Information

On May 24, 2013, the Coast Guard published a Final Rule, entitled, "Safety Zones and Special Local Regulations; Recurring Marine Events in Captain of the Port Long Island Sound Zone" in the Federal Register (78 FR 31402). This rulemaking established multiple safety zones and special local regulations throughout the Captain of the Port Sector Long Island Sound Zone including a safety zone for the Jones Beach Air Show. This final rule was preceded by a NPRM entitled, "Safety Zones and Special Local Regulations; Recurring Marine Events in Captain of the Port Long Island Sound Zone" that was published in the Federal Register (78 FR 20277). No public comments were received for this proposed rulemaking. There were no requests received for a public meeting and none were held.

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 an NPRM would be impracticable. Since the Jones Beach Air Show is scheduled to take place over three days beginning May 23, 2014 through May 25, 2014, it is impracticable to draft, publish, and receive public comment on this rulemaking via an NPRM and still publish a final rule before the event is scheduled to take place. Delaying this rulemaking by waiting for a comment period to run would also reduce the Coast Guard's ability to promote the safety of event participants and the maritime public during this event.

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 for the same reasons stated above.

#### B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1233 and Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory special local regulations.

The Jones Beach Air Show will take place from May 23, 2014 through May 25, 2014. The first day of the event, May 23, 2014 the Jones Beach Air Show will not be open to the general public but aircraft involved in the event will be conducting practice runs over the Atlantic Ocean. On Saturday, May 24, 2014 and

Sunday, May 25, 2014 the Air Show will be open and operating from 10 a.m. through 3 p.m. The event will involve numerous aircraft performing various aerial maneuvers. These aircraft and associated event participants will be operating at high speeds and/or in close proximity to other event participants and spectators. These aerial activities present multiple hazards, including those associated with in-flight accidents that could result in collision, fire, and debris fall-out. The Jones Beach Air show and these aerial activities attract thousands of spectators to Jones Beach State Park as well as a significant number of spectator vessels to the waters around Jones Beach State Park. The operation of these numerous spectator vessels in such close proximity to each other presents additional hazards to the maritime public beyond those associated with the aerial activities.

During a review of the regulations currently published for the Jones Beach Air Show in Table 1 of 33 CFR 165.151 the Coast Guard discovered that the positions marking the corners of the area regulated as a safety zone were published out of order and when followed as published did not include all waters of the Atlantic Ocean that were meant to be covered by the safety zone. To address this discrepancy the Coast Guard is establishing a No Entry area within this special local regulation using the correct order and positions.

Furthermore, the Coast Guard also determined that adding two additional regulated areas would improve the safety of the maritime public. The additional regulated areas will be enforced after the conclusion of each day's activities at the Jones Beach Air Show. The first measure establishes speed restrictions for all vessels operating on the waters between the Meadowbrook State Parkway and the Wantagh State Parkway to be enforced from 3 p.m. to 9 p.m. on May 24, 2014 and May 25, 2014. The area between the two parkways covers all and/or portions of several navigable waterways including but not limited to; Sloop Channel, Haunts Creek, Broad Creek Channel, Wantagh Park Channel, Race Horse Channel, Merrick Bay, and East Bay. The Jones Beach Air Show attracts many spectators and spectator vessels and the mass exodus of these vessels and spectators from the Jones Beach area at the end of each day's Air Show related activities creates hazardous conditions within the aforementioned area. The hazardous conditions include vessel congestion and vessels operating at high speeds on the waters between the Meadowbrook State Parkway and the Wantagh State Parkway.

#### C. Discussion of the Final Rule

This temporary rule establishes a special local regulation to ensure the safety of spectators and vessels from hazards associated with the Jones Beach Air Show. Establishing a special

local regulation around the location of this event will help ensure the safety of spectators, vessels and other property and help minimize the associated risks to the maritime public.

The COTP Sector Long Island Sound has determined that these hazards pose a danger to the maritime public. This special local regulation will temporary regulate three areas around the Jones Beach Air Show, including portions of the Atlantic Ocean, the navigable waters between Meadowbrook State Parkway and the Wantagh State Parkway, and Zach's Bay. The Coast Guard is setting up three types of areas to address the safety concerns:

(1) No Entry Area: This is the area of the Atlantic Ocean over which aircraft associated with the Jones Beach Air Show are performing aerial maneuvers. This area is for the exclusive use of registered event participants, safety, support, and official vessels during periods of enforcement.

(2) Slow / No Wake Area: This area includes the navigable waters between Meadowbrook State Parkway and Wantagh State Parkway. All vessels in this area will operate at "No Wake" speed or up to 6 knots, whichever is slower, during periods of enforcement

(3) No Southbound Traffic Area: This area includes all waters of Zach's Bay. No southbound vessel traffic will be allowed into or within this area during periods of enforcement.

To address the risks associated with this event, the special local regulation establishes the navigable waters between the Meadowbrook State Parkway and the Wantagh State Parkway as a Slow/No Wake area and restricts vessel movement to no wake speed or 6 knots, whichever is slower, during the period of enforcement.

The second measure establishes a regulated area that would restrict southbound traffic into and within Zach's Bay from 3 p.m. to 9 p.m. during each day of the Jones Beach Air Show. Zach's Bay is a small protected bay in close proximity to Jones Beach State Park and the Jones Beach Air Show. Consequently, it is one of the most congested areas for vessel traffic during the Jones Beach Air Show. The large number of vessels departing Zach's Bay at the conclusion of each day's activities creates hazardous conditions in the form of heavily congested waters. These conditions are especially hazardous for any vessels attempting to navigate in the southbound direction and against the flow of the main vessel traffic. To address this hazard the special local regulation establishes all waters of Zach's Bay as a No Southbound Traffic area and restricts all vessel movement to the outbound or northbound direction during the period of enforcement.

The geographic locations of these regulated areas and the specific requirements of this rule are contained in the

regulatory text. This regulation prevents vessels from entering, transiting, remaining, or anchoring within the area designated as the "No Entry Area" during the periods of enforcement unless authorized by the COTP or designated representative. This regulation also partially restricts movement within the "Slow / No Wake Area" and the "No Southbound Traffic Area" unless authorized by the COTP or designated representative.

#### D. Regulatory Analyses

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

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: The regulated areas are of limited size and duration and persons or vessels requiring entry into the regulated areas or requesting a

deviance from the stipulations of the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative. Also vessels not requesting or not receiving authorization to enter, transit through, anchor in, or remain within the regulated areas may navigate in all other portions of the waterways not designated as regulated areas.

Advanced public notifications will also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated

areas during the periods of enforcement from May 23, 2014 to May 25, 2014. The "No Entry Area" will be enforced each day from 9 a.m. to 3:30 p.m. beginning May 23, 2014 through May 25, 2014. The "Slow / No Wake Area" and the "No Southbound Traffic Area" will be enforced from 3 p.m. to 9 p.m. on May 24, 2014 and May 25, 2014.

This temporary special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated areas are of short duration, vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas, vessels can operate within the regulated area provided they do so in accordance with the regulation, and vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative. Additionally, before the effective period, public notifications will be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

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.

#### 4. 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).

#### 5. Federalism

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 determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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.

#### 7. 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.

#### 8. 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.

#### 9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 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 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 the establishment of a special local regulation. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recording requirements, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add § 100.35T01-0250 to read as follows:

§ 100.35T01-0250 Special Local Regulation; Jones Beach Air Show;  
Atlantic Ocean, Sloop Channel through East Bay, and Zach's Bay;  
Wantagh, NY

(a) Regulated Areas. All coordinates are North American Datum 1983 (NAD 83).

(1) No Entry Area. Waters of the Atlantic Ocean off Jones Beach State Park, Wantagh, NY contained within the following described area; Beginning in approximate position 40°34'54"N, 073°33'21"W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35'53"N, 073°28'48"W; then running south to a position in the Atlantic Ocean off of Jones Beach at approximate position 40°35'05"N, 073°28'34"W; then running West to approximate position 40°33'15"N, 073°33'09"W; then running North to the point of origin.

(2) Slow / No Wake Area. All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in approximate position 40°35'49.01"N 73°32'33.63"W then north along the Meadowbrook State Parkway to its intersection with Merrick Road in

approximate position  $40^{\circ}39'14.00"N$   $73^{\circ}34'00.76"W$  then east along Merrick Road to its intersection with Wantagh State Parkway in approximate position  $40^{\circ}39'51.32"N$   $73^{\circ}30'43.36"W$  then south along the Wantagh State Parkway to its intersection with Ocean Parkway in approximate position  $40^{\circ}35'47.30"N$   $73^{\circ}30'29.17"W$  then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin in approximate position  $40^{\circ}35'49.01"N$   $73^{\circ}32'33.63"W$ .

(3) No Southbound Traffic Area. All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay in approximate position  $40^{\circ}36'29.20"N$ ,  $073^{\circ}29'22.88"W$  and a point near the eastern entrance of Zach's Bay in approximate position  $40^{\circ}36'16.53"N$ ,  $073^{\circ}28'57.26"W$ .

(b) Special Local Regulations. (1) In accordance with the general regulations found in section 100.35 of this part, entering into, transiting through, anchoring or remaining within the regulated areas is prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound, or designated representative.

(2) The following persons and vessels are authorized by the COTP Sector Long Island Sound to enter areas of this special local regulation:

(i) No Entry Area. Registered event participants, safety,

support, and official vessels.

(ii) Slow / No Wake Area. Spectator vessels may transit within the "Slow / No Wake Area" at no wake speed or 6 knots, whichever is slower.

(iii) No Southbound Traffic Area. Spectator vessels may transit the "No Southbound Traffic Area" in the northbound direction or outbound direction.

(3) All persons and vessels shall comply with the instructions of the COTP Sector Long Island Sound or designated representative.

(4) Spectators desiring to enter the "No Entry Area" must contact the COTP Sector Long Island Sound by telephone at (203)-468-4401, or designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the COTP Sector Long Island Sound or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Sector Long Island Sound or designated representative.

(5) Spectators desiring to operate within the "Slow / No Wake Area" or "No Southbound Traffic Area" outside the

stipulations for those regulated areas must contact the COTP Sector Long Island Sound by telephone at (203)-468-4401, or designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, remain within, or deviate from the stipulations of the regulated areas is granted by the COTP Sector Long Island Sound or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Sector Long Island Sound or designated representative.

(6) The Coast Guard will provide notice of the regulated areas prior to the event through appropriate means, which may include but is not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

(c) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound (LIS), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants, safety, support, or official patrol vessels.

(d) Enforcement Period. (1) The "No Entry Area" will be enforced each day from 9:00a.m. to 3:30 p.m. from May 23, 2014 to May 25, 2014.

(2) The "Slow / No Wake Area" and the "No Southbound Traffic Area" will be enforced each day from 3:00 p.m. to 9:00 p.m. from May 24, 2014 to May 25, 2014.

Dated: May 7, 2014.

E. J. Cubanski, III,  
Captain, U. S. Coast Guard,  
Captain of the Port Sector Long Island Sound.

[FR Doc. 2014-11563 Filed 05/20/2014 at 8:45 am; Publication Date: 05/21/2014]