



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0324]

RIN 1625-AA08

Special Local Regulations; Marine Events held in the Sector Long Island Sound Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two special local regulations for two separate marine events within the Coast Guard Sector Long Island Sound (LIS) Captain of the Port (COTP) Zone. This temporary final rule is necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring or anchoring within these regulated areas is prohibited unless authorized by COTP Sector Long Island Sound.

DATES: This rule is effective without actual notice from 12:01 a.m. on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until 5 p.m. on June 12, 2016. For the purposes of enforcement, actual notice will be used from the date the rule was signed, 18 May, 2016, until **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES:

To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0324 in the "SEARCH" box and click "SEARCH."

Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Jay TerVeen, Prevention Department, Coast Guard Sector Long Island Sound, telephone (203) 468-4446, e-mail Jay.C.TerVeen@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum 1983

II. Background Information and Regulatory History

This rulemaking establishes two special local regulations for one regatta and one air show. Each event and its corresponding regulatory history are discussed below.

Jones Beach (Air Show): A special local regulation was established in 2015 for the Jones Beach Air Show event when the Coast Guard issued a final rule entitled, “Special Local Regulations and Safety Zones; Marine Events held in the Sector Long Island Sound Captain of the Port Zone”. This rulemaking was published on May 18, 2015 in the Federal Register (80 FR 28176).

The Harvard-Yale Regatta is a reoccurring marine event with regulatory history and is cited in 33 CFR 100.100(1.1). This event has been included in this rule due to deviation from the cite date.

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 an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. There is insufficient time to publish an NPRM, take public comments, and issue a final rule before these events take place. Thus, waiting for a comment period to run would inhibit the Coast Guard’s mission to keep the ports and waterways safe.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1233.

The COTP Sector LIS has determined that the special local regulations established by this temporary final rule are necessary to provide for the safety of life on navigable waterways during these events.

IV. Discussion of the Rule

This rule establishes two special local regulations for one regatta and one air show. The locations of these regulated areas are as follows:

Special Local Regulations

1	Jones Beach Air Show	Location: There will be three areas created for the special local regulation. The first area, “No Entry Area”, is on the navigable waterway located along the south shore of Jones Beach State Park. The second area, “Slow/No Wake Area”, is located on
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		the navigable waterway between Meadowbrook State Parkway and Wantagh State Parkway. The third area, “No Southbound Traffic Area”, in the navigable waters of Zach’s Bay.
2	Harvard-Yale Regatta	Location: All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21’46.94” N 072°5’14.46” W to Bartlett Cove 41°25’35.9” N 072°5’42.89” W (NAD 83).

This rule establishes additional vessel movement rules within areas specifically under the jurisdiction of the special local regulations during the periods of enforcement unless authorized by the COTP or 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 these statutes and Executive order 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. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: 1) the enforcement of these regulated areas will be relatively short in duration, 2) persons or vessels desiring entry into the “No Entry” area or a deviance from the stipulations within the “Slow/No Wake Area” may be authorized to do so by the COTP Sector Long Island Sound or

designated representative, may do so with permission from the COTP Sector LIS or a designated representative; 3) vessels can operate within the regulated area provided they do so in accordance with the regulation and 4) before the effective period, public notifications will be made to local mariners through appropriate means, which may include the Local Notice to Mariners as well as Broadcast Notice to Mariners.

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 these regulated areas 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 (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.

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 proposed 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 Orders 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 temporary rule involves the establishment of two regulated areas. It 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 will be 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.

G. 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.

List of Subjects in 33 CFR Part 100

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 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.T01-0324 to read as follows:

§100.T01-0324 Special Local Regulations; Marine Events held in the Sector Long Island Sound

Captain of the Port Zone

- (a) Location. This section will be enforced at the locations listed for each event in the Table to §100.T01-0324.
- (b) Enforcement period. This rule will be enforced on the dates and times listed for each event in TABLE 1 to §100.T01-0324.
- (c) Definitions. The following definitions apply to this section: A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, 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. “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. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

- (d) Regulations. (1) The general regulations contained in 33 CFR 100.35 apply.
- (2) Operators of vessels desiring to deviate from these regulations should contact the COTP Sector Long Island Sound at 203-468-4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so.
- (3) Any vessel given permission to deviate from these regulations must comply with all directions given to them by the COTP Sector Long Island Sound, or the designated on-scene representative.
- (4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

TABLE to §100.T01-0324

Special Local Regulations

1	Jones Beach Air Show	<ul style="list-style-type: none"> • Date: May 26-29, 2016 • Time: <ol style="list-style-type: none"> (1) The “No Entry Area” will be enforced each day from the start of the air show until 30 minutes after it concludes. (2) The Slow/No Wake Area and the “No Southbound Traffic Area” will be enforced each day for six hours after the air show concludes. • Location: “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. “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°39'14.00"N 73° 34'00.76"W then east along Merrick Road to its intersection with Wantagh State Parkway in approximate position 40°39'51.32"N 73°30'43.36"W then south along the Wantagh State Parkway to its intersection with Ocean Parkway in approximate position 40°35'47.30"N 73° 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° 35'49.01"N 73°32'33.63"W. “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°36'29.20"N, 073°29'22.88"W and a point near the eastern entrance of Zach’s Bay in approximate position 40°36'16.53"N, 073°28'57.26"W.
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2	Harvard-Yale Regatta	<ul style="list-style-type: none"> • Date: June 12, 2016 • Time: 2:00 p.m. to 5:00 p.m. • Location: “All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21’46.94” N 072°5’14.46” W to Bartlett Cove 41°25’35.9” N 072°5’42.89” W (NAD 83). • Additional Stipulations: Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event at least 30 minutes prior to the start of the races. They must remain moored or at anchor until the men's varsity have passed their positions. At that time, spectator vessels located south of the Harvard Boathouse may proceed downriver at a reasonable speed. Vessels situated between the Harvard Boathouse and the finish line must remain stationary until both crews return safely to their boathouses. If for any reason the men's varsity crew race is postponed, spectator vessels will remain in position until notified by Coast Guard or regatta patrol personnel. The last 1000 feet of the race course near the finish line will be delineated by four temporary white buoys provided by the sponsor. All spectator craft shall remain behind these buoys during the event. Spectator craft shall not anchor: to the west of the race course, between Scotch Cap and Bartlett Point Light, or within the race course boundaries or in such a manner that would allow their vessel to drift or swing into the race course. During the effective period all vessels shall proceed at a speed not to exceed six knots in the regulated area. Spectator vessels shall not follow the crews during the races. Swimming is prohibited in the vicinity of the race course during the races. A vessel operating in the vicinity of the Submarine Base may not cause waves which result in damage to submarines or other vessels in the floating dry-docks.
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Dated: May 18, 2016

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

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