



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0571]

RIN 1625-AA00

Safety Zone; DeStefano Wedding Fireworks Display, Patchogue Bay, Patchogue, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Patchogue Bay, in Patchogue, NY for the DeStefano family wedding fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area is prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: This rule is effective from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 10:30 p.m. on November 4, 2012.

This will be enforced from 8:30 p.m. on November 3, 2012 until 10:30 p.m. on November 4, 2012.

ADDRESSES: Documents mentioned in this preamble are part of

docket [USCG-2012-0571]. 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 Joseph Graun, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468-4544, [Joseph.L.Graun@uscg.mil](mailto:Joseph.L.Graun@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, 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
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

On August 3, 2012 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; DeStefano Wedding

Fireworks Display, Patchogue Bay, Patchogue, NY in the Federal Register (77 FR 46349).

We received no comments and no requests for a public meeting.

#### B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 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 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary regulation is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display.

#### C. Discussion of Comments, Changes and the Final Rule

We received no comments and no changes have been made to the rule.

#### 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 area is of limited duration and covers only a small portion of the navigable waterways. Also, mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone.

Advanced public notifications will be made to the local maritime community through 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 received no comments from the Small Business Administration on this

rule. 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 area during the enforcement period. The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated area is of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

### 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 INTFORMATION 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 safety zone. This rule is categorically excluded from further review under paragraph 34(g) 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 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 AREA AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 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.T01-0571 to read as follows:

§ 165.T01-0571 Safety Zone; DeStefano Wedding Fireworks Display Patchogue Bay, Patchogue, NY

(a) Location. The following area is a safety zone: All waters of Patchogue Bay within a 1000-foot radius of the fireworks barge located off Patchogue, NY in approximate position 40°44'44.47" N, 073°00'41.25" W North American Datum 1983.

(b) Notification. Coast Guard Sector Long Island Sound will cause notifications to be made to the local maritime community through all appropriate means such as Local Notice to Mariners or Broadcast Notice to Mariners well in advance of the event.

(c) Enforcement Period. This rule will be enforced from 8:30 p.m. until 10:30 p.m. on November 3, 2012. If the event is postponed due to inclement weather, then this rule will be enforced from 8:30 p.m. until 10:30 p.m. on November 4, 2012.

(d) Regulations. The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

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

(i) 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 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. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(ii) 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.

(iii) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(2) Vessel operators desiring to enter or operate within the regulated area 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) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or

official patrol vessels in the regulated area during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector Long Island Sound or designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(5) The COTP Sector Long Island Sound or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(6) Fireworks barges used in this location will have a sign on their port and starboard side labeled "FIREWORKS-STAY AWAY". This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Dated: September 21, 2012

H. L. Najarian  
Commander, U. S. Coast Guard  
Acting Captain of the Port Sector Long Island Sound

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