



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0227]

RIN 1625-AA00

Safety Zones; Fireworks Displays in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones for fireworks displays within the Captain of the Port (COTP) Long Island Sound (LIS) Zone. This action is necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring or anchoring within these zones is prohibited unless authorized by the COTP Sector Long Island Sound.

DATES: This rule is effective from April 27, 2013, until June 22, 2013. This rule will be enforced during the specific dates and times listed in Table of §165.T01-0227.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0227]. 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) 468-4428, 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	<u>Federal Register</u>
LIS	Long Island Sound
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

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). Because the information for the list of events in the Captain of the Port Long Island Sound Zone was not finalized until recently, it is impracticable to undertake notice and comment with regard to the events in this regulation because the events are set to occur as scheduled. Additionally, events listed in this temporary final rule are currently open for comment in the related NPRM published at 78 FR 20277 and Docket Number USCG-2013-1036 titled, "Safety Zones & Special local Regulations; Recurring Marine Events in Captain of the Port" (April 4, 2013).

For the same reasons, 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. Any delay encountered in this regulation's effective date by waiting for the NPRM comment period to close would be impracticable and contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters from the hazardous nature of fireworks including unexpected detonation and burning debris.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 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; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory

safety zones.

This rulemaking establishes safety zones for marine events involving fireworks displays on the navigable waters of the COTP Sector LIS zone. This rule is necessary to protect waterway users from the dangers inherent to fireworks displays.

C. Discussion of the Final Rule

This temporary rule establishes safety zones for three fireworks displays in the COTP Sector LIS zone. Each zone encompasses a 600 foot radius around the launch site. These events are:

Fireworks Display Events	
1 Bridgeport Bluefish April Fireworks	• Location: Waters of the Pequannock south of the Interstate 95 bridge surrounding Steel Point in Bridgeport, CT.
2 Cherry Grove Arts Project Fireworks	• Location: Waters of the Great South Bay 1200 feet north of Cherry Grove, NY.
3 Bridgeport Bluefish June Fireworks	• Location: Waters of the Pequannock south of the Interstate 95 bridge surrounding Steel Point in Bridgeport, CT.

Because large numbers of spectator vessels are expected to congregate around the location of these events, these regulated areas are needed to protect both spectators and participants from the safety hazards created by them including unexpected pyrotechnics detonation and burning debris.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as

regulated areas during the periods of enforcement unless authorized by the COTP or designated representative.

The Coast Guard has determined that these regulated areas will not have a significant impact on vessel traffic due to their temporary nature, limited size, and the fact that vessels are allowed to transit the navigable waters outside of the regulated areas. The COTP will cause public notifications to be made by all appropriate means including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

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 rule is not a significant regulatory action for the following reasons: The regulated areas will be of limited duration and cover only a

small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Vessels requiring entry into the regulated areas may be authorized to do so by the COTP or designated representative.

Advanced public notifications will also be made to the local maritime community by 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.

The owners or operators of vessels intending to transit or anchor in the designated regulated areas during the enforcement periods stated for each event listed below in the List of Subjects.

The temporary safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated areas will be of limited size

and of short duration, and vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas. Additionally, notifications will be made before the effective period by all appropriate means, including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

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 safety zones. 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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and 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, 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; and Department of Homeland Security Delegation No. 0170.1

2. Add §165.T0-0227 to read as follows:

§165.T0-0227 Safety Zones; Fireworks Displays in Captain of the Port Long Island Sound Zone.

(a) Regulations. The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the events listed in the TABLE of §165.T01-0227. These regulations will be enforced for the duration of each event.

(b) Enforcement period. This rule will be enforced from on the dates and times listed for each event in TABLE of §165.T01-0227.

(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, 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.

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

(d) Spectators desiring to enter or operate within the regulated areas should contact the COTP or the designated representative via VHF channel 16 or by telephone at (203) 468-4404 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(e) Upon being hailed by an official patrol 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.

(f) The regulated area for all fireworks displays listed in the TABLE of §165.T01-0227 is that area of navigable waters within a 1000 foot radius of the launch platform or launch site for each fireworks display. Fireworks barges used in these locations will also 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. Shore sites used in these locations will display a sign labeled "FIREWORKS-STAY AWAY" with the same dimensions.

Table of §165.T01-0227

Fireworks Display Events	
1 Bridgeport Bluefish April Fireworks	<ul style="list-style-type: none">• Date: Saturday April 27, 2013 from 7:30 p.m. until 10:30 p.m.• Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10'35"N 073°10'58"W (NAD 83).

2 Cherry Grove Arts Project Fireworks	<ul style="list-style-type: none"> • Date: Sunday June 9, 2013 from 9 p.m. until 10 p.m. • Rain Date: Monday June 10, 2013 • Location: Waters of the Great South Bay off Cherry Grove, NY in approximate position 40°39'49.06"N, 073°05'27.99"W (NAD 83).
3 Bridgeport Bluefish June Fireworks	<ul style="list-style-type: none"> • Date Saturday June 8, 2013 from 7:30 p.m. until 10:30 p.m. and Saturday June 22, 2013 from 7:30 p.m. until 10:30 p.m. • Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10'35"N 073°10'58"W (NAD 83).

Dated: April 11, 2013

J. M. Vojvodich
 Captain, U. S. Coast Guard
 Captain of the Port Sector Long Island Sound

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