



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0377]

RIN 1625- AA08

Special Local Regulation; On Water Activities Associated with the 2016 Macy's 4<sup>th</sup> of July Fireworks, East River, Manhattan, 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 East River and Upper New York Bay Manhattan and Brooklyn, NY for on water vessel management associated with the Macy's 4<sup>th</sup> of July fireworks show. This Special Local Regulation allows the Coast Guard to enforce spectator vessel movement and prohibit all vessel traffic from entering the fireworks barge buffer zone during times when the associated event could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters and to establish public viewing areas during the event.

**DATES:** This rule is effective from 6p.m. through 11 p.m. on July 4, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0377 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, call or email Lieutenant Junior Grade Kathleen Kane, Vessel Traffic Services Division, Sector New York, U.S. Coast Guard; telephone (718) 354-4010, email Kathleen.E.Kane@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
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 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. The Coast Guard was provided the final details for this event on March 31, 2016. Macy’s is unable to move their event to a later date because of the highly publicized nature of this 4<sup>th</sup> of July event. Due to a major change in the location of the event from the Hudson, to East River, the Coast Guard was unable to use the safety zone established by the recurring Macy’s 4<sup>th</sup> of July fireworks regulation published in Table 1 of 33 CFR 165.160.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Any delay in this rule becoming effective would be contrary to public interest since immediate action is needed to provide for the safety of life and property on the navigable waters due to the inherent hazards created by the high concentration of spectator vessels expected in attendance for the event.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. This Special Local Regulation is necessary to ensure the safety of spectators and vessels from hazards associated with the anticipated concentration of vessels, before, during, and after the scheduled event.

### **IV. Discussion of Comments, Changes, and the Rule**

The Coast Guard is establishing a Special Local Regulation on the navigable waters of the East River and Upper New York Bay along Manhattan and Brooklyn, NY for the on water management of vessels associated with the 2016 Macy's 4<sup>th</sup> of July event. The Special Local Regulation is necessary to ensure the safety of spectators from hazards associated with the anticipated concentration of vessels for the event.

The event is scheduled to occur from 9:20 p.m. through 9:50 p.m. and the COTP New York anticipates a large number of vessels will congregate to view the fireworks display. This rule will be enforced from 6 p.m. through 11 p.m. on July 4, 2016 in order to ensure that the area is clear of persons and vessels before the fireworks display begins, and to ensure that no hazards remain after the fireworks display ends. If the event is cancelled due to inclement weather, then this regulation will be enforced from 6 p.m. through 11 p.m. on July 5, 2016.

The COTP New York will establish seven limited access areas within the boundary of the regulated area. Access to these areas will be restricted to vessels of a certain size. The seven limited access areas are: (1) a “spectator area” designated ALFA in which access is limited to vessels greater than or equal to 20 meters in length (65.6ft); (2) a “spectator area” designated BRAVO in which access is limited to vessels less than 20 meters in length (65.6ft); (3) a “buffer zone” around the fireworks launch barges, designated area CHARLIE, limited to all vessels tending the fireworks launch barges; (4) a “spectator area” designated DELTA in which access is limited to vessels greater than 20 meters in length (65.6ft); (5) a “spectator area” designated ECHO in which access is limited to vessels less than or equal to 20 meters in length (65.6ft); (6) a “buffer zone” around the fireworks launch barge, designated area FOXTROT, limited to all vessels tending the fireworks launch barges; (7) a “spectator area” designated GOLF in which access is open to all vessels all lengths.

Based on the inherent hazards associated with large concentrations of vessels in tight confines, the COTP New York has determined that the event poses a significant risk to public safety and property. The combination of an increased number of recreational vessels, congested waterways, and darkness has the potential to result in serious injuries or fatalities. The buffer zone along with the designated viewing areas will restrict vessels from a portion of the East River around the location of the fireworks launch platform before, during, and immediately after the event. All persons and vessels shall comply with the instructions of the COTP New York or a designated representative during the enforcement of the Special Local Regulation.

Consistent with 33 CFR 165.7, the Coast Guard will notify the public and local mariners of this Special Local Regulation through appropriate means, which may include, but are not limited to, publication in the Federal Register, the Local Notice to Mariners, and Broadcast Notice

to Mariners.

## **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. 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.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will only be restricted from the regulated area for a limited duration, and the Special Local Regulation is in effect during late night hours when vessel traffic is low. Advanced public notifications will also be made to local mariners through appropriate means, which may include, but would not be limited to, Local Notice to Mariners and 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 received no comments from the Small Business Administration on this rulemaking. 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 enter or transit within the Special Local Regulation 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 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### 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 restricting vessel movement within a Limited Access Area established by 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 will be available in the docket where indicated under ADDRESSES, though due to the short timeline it may be made available after publication of this rule in the FR. 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**

Marine safety, Navigation (water), Reporting and recordkeeping 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 § 100.35T01-0481 to read as follows:

§ 100.35T01-0481 Special Local Regulation; On Water Activities Associated with the 2016 Macy's 4<sup>th</sup> of July Fireworks, East River, Manhattan, NY.

(a) Regulated area. The regulated area includes all navigable waters of the East River and Upper New York Bay bounded by a line drawn from position 40°45'20"N, 073°57'21"W (57<sup>th</sup> Street, New York, NY to 43<sup>rd</sup> Ave. Long Island City, NY), south along the East River to position 40°40'55"N, 074°01'21"W (Southern tip of Governors Island, NY to Red Hook Point, NY), bounded West by a line drawn from position 40°41'47"N, 074°00'37"W (Southern tip of Downtown Manhattan Heliport, NY to Governors Island Ventilator, NY). All geographic coordinates are North American Datum of 1983 (NAD 83). Within the overall regulated area defined above, the following are individually defined areas subject to specific requirements:

(1) Area ALPHA. All navigable waters of the East River south of a line drawn from position 40°45'20"N, 073°57'21"W (57<sup>th</sup> Street, New York, to 43<sup>rd</sup> Ave, Long Island City, New York) to a line drawn from position 40°44'58"N. 073°57'41"W (47<sup>th</sup> Street, New York, NY to N Basin Rd, Long Island City, NY) between the east shore of Manhattan and west shore of Roosevelt Island.

(2) Area BRAVO. All navigable waters of the East River south of a line drawn from position 40°45'20"N, 073°57'21"W (57<sup>th</sup> Street, New York, to 43<sup>rd</sup> Ave, Long Island City, New York) to a line drawn from position 40°44'58"N. 073°57'41"W, (47<sup>th</sup> Street, New York, NY to N Basin Rd, Long Island City, NY) between the east shore of Roosevelt Island and west shore of Long Island City. (NAD 83)

(3) Area CHARLIE. All navigable waters of the East River bound by a line drawn from position 40°44'58"N. 073°57'41"W (47<sup>th</sup> Street, New York, NY to N Basin Rd, Long Island City,

NY), south along the East River to position 40°43'40"N, 073°57'59"W (15<sup>th</sup> Street, New York, NY to Noble Street, Brooklyn, NY), (NAD 83).

(4) Area DELTA. All navigable waters of the East River by a line drawn from position 40°43'40"N, 073°57'59"W (15<sup>th</sup> Street, New York, NY to Noble Street, Brooklyn, NY), south to a line drawn from position 40°43'19"N, 073°58'04"W (7<sup>th</sup> Street, New York, NY to Bushwick Inlet Park), (NAD 83).

(5) Area ECHO. All navigable waters of the East River by a line drawn from position 40°43'19"N, 073°58'04"W (7<sup>th</sup> Street, New York, NY to Bushwick Inlet Park), south to position 40°42'52"N, 073°58'18"W (East River Park, New York, NY to S 4<sup>th</sup> Street),(NAD 83).

(6) Area FOXTROT. All navigable waters of the East River by a line drawn from position 40°42'52"N, 073°58'18"W (East River Park, New York, NY to S 4<sup>th</sup> Street), south to position 40°41'58"N, 074°00'16"W (Downtown Manhattan Heliport to Pier 3 Brooklyn, NY).

(7) Area GOLF. All navigable waters of the Upper Bay, New York Harbor, NY, south of a line drawn from position 40°41'58"N, 074°00'16"W to a line drawn from position 40°41'29"N, 074°00'31"W (Governors Island Ventilator to Pier 7 Brooklyn, NY), south. West by a line drawn from position 40°41'47"N, 074°00'37"W (Downtown Manhattan Heliport to Governors Island Ventilator).

(b) 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) New York, to act on his or her behalf.

(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 New

York.

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

(c) Special local regulations. (1) In accordance with the general regulations in § 100.35, entry into, transiting, or anchoring within the regulated areas is prohibited, unless authorized by the COTP or a designated representative.

(2) Vessels are authorized by the COTP or a designated representative to enter areas of this special location regulation in accordance with the following restrictions:

(i) Area ALPHA access is limited to vessels greater than or equal to 20 meters (65.6ft) in length.

(ii) Area BRAVO access is limited to vessels less than 20 meters (65.6ft) in length.

(iii) All vessels are prohibited from entering area CHARLIE without permission from the COTP or a designated representative.

(iv) Area DELTA access is limited to vessels less than 20 meters (65.6ft) in length.

(v) Area ECHO access is limited to vessels greater than or equal to 20 meters (65.6ft) in length.

(vi) All vessels are prohibited from entering area FOXTROT without permission from the COTP or a designated representative.

(vii) Area GOLF access is not limited by vessel length.

(3) All persons and vessels in the regulated areas shall comply with the instructions of the COTP or a designated representative. Vessels shall be present in the corresponding areas by 7:30 p.m.

(4) Upon being hailed by a U.S. Coast Guard vessel or a designated representative, by

siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. A 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. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(5) Vessel operators desiring to enter or operate within the regulated area should contact the COTP New York at (718) 354-4356 (Sector NY Command Center) or a designated representative via VHF channel 16 to obtain permission to do so.

(6) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times unless authorized by COTP New York or a designated representative.

(7) The COTP New York or a designated representative may delay or terminate any marine event in this subpart at any time if it is deemed necessary to ensure the safety of life or property.

(d) Enforcement period. This regulation will be enforced from 6 p.m. until 11 p.m. on July 4, 2016, and if the fireworks display is postponed due to inclement weather, it will be enforced from 6 p.m. until 11 p.m. on July 5, 2016.

Dated: May 23, 2016.

M. H. Day,  
Captain, U.S. Coast Guard,  
Captain of the Port New York.

[FR Doc. 2016-13780 Filed: 6/9/2016 8:45 am; Publication Date: 6/10/2016]