



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0244]

RIN 165-AA08

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing two temporary special local regulations in Coast Guard Sector Long Island Sound Captain of the Port Zone. This temporary final rule is necessary to protect event participants from vessel traffic hazards associated with these events. One regulation prohibits the entry of vessels or persons into a “no entry zone” and requires vessels transiting through the “no wake zone” to travel at no wake speed or 6 knots, whichever is slower. The second regulation requires vessels transiting through the regulated area travel at no wake speed or 6 knots, whichever is slower, and maintain a minimum distance of 100 feet from the swimmers in the regulated area.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 10 a.m. July 14, 2019. For the purposes of enforcement, actual notice will be used from 8:30 p.m. June 22, 2019 through [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-2019-0244 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 Chief Petty Officer Katherine Linnick, Prevention Department, Coast Guard Sector Long Island Sound, telephone (203) 468-4565, e-mail [Katherine.E.Linnick@uscg.mil](mailto:Katherine.E.Linnick@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background Information and Regulatory History

The Dolan Family Fourth Fireworks is a recurring marine event that takes place in Oyster Bay Harbor, NY. A permanent special local regulation is established and cited in 33 CFR 100.100 in Table at 7.2. This rule established a special local regulation on the navigable waters of the Oyster Bay, NY for vessel management in the vicinity of the fireworks display, including a “No Entry Area” within a 1000 foot radius of the fireworks launch platform in Oyster Bay, NY and a separate “Slow/No Wake Area.” This temporary final rule is necessary due to a new event date.

The Mystic Sharkfest Swim is a recurring marine event that occurred most recently in 2018. On July 6, 2018 the COTP Long Island Sound established a special local regulation when he issued a temporary rule entitled, “Special Local Regulation; Mystic Sharkfest Swim, Mystic River; Mystic, CT” which was published in a quarterly notice (3<sup>rd</sup> Quarter 2018) of expired

temporary rules. This rule can be viewed by entering USCG-2018-0620 in the "SEARCH" box and clicking "SEARCH." at <http://www.regulations.gov>. This rule established a temporary special local regulation on the navigable waters of the Mystic River off Mystic, CT for vessel management in the vicinity of the Mystic Sharkfest Swim with the same locations and restrictions on access as this 2019 temporary special local regulation. The 2018 Mystic Sharkfest Swim occurred without incident. It also occurred in 2015 and 2016 without incident.

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 NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard was not provided enough notice regarding the change in date of the Dolan Family Fourth Fireworks and the occurrence of the Mystic Sharkfest Swim events by the event sponsors to allow for publishing a NPRM, taking public comments, and issuing a final rule before the events take place. The potential safety hazards associated with these events and the large numbers of spectators, participants, and vessels require immediate action to ensure the safety of the event and the public. It is impracticable to publish an NPRM because we must establish the special local regulation by June 22, 2019. Thus, waiting for a comment period to run is also contrary to the public interest as it would inhibit the Coast Guard's mission to keep the ports and waterways safe, protect the public from the hazards associated with these events, and minimize the impact on vessel traffic on the navigable waterway.

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**. Delaying the effective date of this rule would be impracticable because the special local regulation must be established by June 22, 2019 for the events.

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

The Coast Guard is issuing this temporary rule under authority in 33 U.S.C. 1233. The COTP Long Island Sound has determined that potential hazards associated with these events will be a safety concerns if vessels get within 1000 feet of the fireworks launch platform, create a wake in the vicinity of the fireworks or swimmers, or get within 100 feet of the swimmers. The special local regulation established by this rule is necessary to provide for the safety of life on navigable waterways before, during, and after these scheduled events.

### **IV. Discussion of the Rule**

The Dolan Family Fourth Fireworks rule establishes a special local regulation on the navigable waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY in the vicinity of the fireworks launch on June 22, 2019 from 8:30 p.m. to 10:30 p.m. This special local regulation includes two measures to reduce the risks to waterway users and event participants during the fireworks display. The first measure prohibits entry of vessels and persons within a 1000 foot radius of the launch platform in approximate position 41°53'42.50"N; 073°30'04.30"W. (NAD 83). The second measure will restrict vessel speeds within the regulated area to a no wake speed, or 6 knots, whichever is slower during the event. Based on the hazards associated with launching fireworks on a navigable waterway where vessels transit, the COTP Long Island Sound has determined the fireworks event poses a significant risk to public safety.

The duration of the special local regulation is intended to protect persons, vessels, and the marine environment.

The Mystic Sharkfest rule establishes a special local regulation on the navigable waters of Mystic River in the vicinity of Mystic, Connecticut, for the management of vessels in the vicinity of the Mystic Sharkfest Swim. The Mystic Sharkfest Swim is a 1500 meter swim from Mystic Seaport, down the Mystic River, under the Bascule drawbridge to finish at the boat launch ramp at the north end of Seaport Marine. The Mystic Sharkfest Swim is scheduled to start at 8:00 a.m. on July 14, 2019.

This special local regulation includes two measures to reduce the risks to waterway users and event participants during the Mystic Sharkfest Swim. The first measure will restrict vessel speeds within the regulated area to a no wake speed, or 6 knots, whichever is slower from 8:00 a.m. to 10:00 a.m. on the day of the event. The second measure prohibits vessels from coming within 100 feet of swimmers participating in the event from 8:30 a.m. to 9:30 a.m. on the day of the event. Based on the hazards associated with persons swimming on a navigable waterway where vessels transit, the COTP Long Island Sound has determined the swim event poses a significant risk to public safety. The duration of the special local regulation is intended to protect persons, vessels, and the marine environment.

The Coast Guard will notify the public and local mariners of the 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 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 13771 directs agencies to control regulatory costs through a budgeting process. 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 (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: 1) the enforcement of this regulation will be short in duration and each special local regulation will last only two hours; 2) persons or vessels desiring to enter the regulated area may do so with permission from the COTP LIS or a designated representative; 3) the regulated area is designed to limit impacts on vessel traffic, permitting vessels to navigate in other portions of the waterway; and 4) the Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners to increase public awareness of this special local regulation.

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 this regulated area 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 proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

These rules 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 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 these rules will not result in such an expenditure, we do discuss the effects of these rules 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 rule involves the establishment of a two special local regulations lasting only 2 hours that will control vessel traffic in Oyster Bay, NY and and thus this rule is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Memorandum For Record for Categorically Excluded Actions that do not require a REC 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**

Marine safety, Navigation (water), Reporting and record keeping 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: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add §100.T01-0244 to read as follows:

§100.T01-0244 Special Local Regulation; Dolan Family Fourth Fireworks, Oyster Bay Harbor, Oyster Bay, NY.

(a) Location. The following areas are included with this special local regulation:

(1) “No Entry Area”: All waters of the Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY within a 1000 foot radius of the launch platform in approximate position 40°53’42.50”N; 073°30’04.30”W (NAD83).

(2) “Slow/No Wake Area”: All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY contained within the following area; beginning at a point on land in position at 40°53’12.43” N., 073°31’13.05” W. near Moses Point; then east across Oyster Bay Harbor to a point on land in position at 40°53’15.12” N., 073°30’38.45” W.; then north along the shoreline to a point on land in position at 40°53’34.43” N., 073°30’33.42” W. near Cove Point; then east along the shoreline to a point on land in position at 40°53’41.67” N., 073°29’40.74” W. near Cooper Bluff; then south along the shoreline to a point on land in position 40°53’05.09” N., 073°29’23.32” W. near Eel Creek; then east across Cold Spring Harbor to a point on land in position 40°53’06.69” N., 073°28’19.9” W.; then north along the shoreline to a point on land in position 40°55’24.09” N., 073°29’49.09” W. near Whitewood Point; then west across Oyster Bay to a point on land in position 40°55’5.29” N., 073°31’19.47” W. near Rocky Point; then south along the shoreline to a point on land in position 40°54’04.11” N., 073°30’29.18” W. near Plum Point; then northwest along the shoreline to a point on land in position 40°54’09.06” N., 073°30’45.71” W.; then southwest along the shoreline to a point on land in position 40°54’03.2”

N., 073°31'01.29" W.; and then south along the shoreline back to point of origin (NAD 83). All positions are approximate.

(b) Enforcement period. This rule will be enforced from 08:30 p.m. to 10:30 p.m. on June 22, 2019.

(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 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.

“Official patrol vessels” may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) Special local regulations. (1) In accordance with the general regulations found in section 33 CFR 100.100, Vessels may not transit the “No Entry Area” without the approval of the COTP or a designated representative.

(2) Vessel operators desiring to enter or operate within the “No Entry Area” shall contact the COTP or the designated representative at 203-468-4401 (Sector LIS command center) or via VHF channel 16.

(3) Any vessel given permission to deviate from these regulations and transit the “No Entry Area” must comply with all directions given to them by the COTP or a designated representative and must operate at a no wake speed, or 6 knots, whichever is slower.

(4) Vessels may only transit the “Slow/No Wake area” at a no wake speed or 6 knots, whichever is slower.

(5) 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.

3. Add §100.T01-0245 to read as follows:

§100.T01-0245 Special Local Regulation; Mystic Sharkfest Swim, Mystic River, Mystic, CT.

(a) Location. The following areas are included with this special local regulation:

All navigable waters of Mystic River off Mystic, CT contained within the following area; beginning at a point on land in position at 41°21'41" N, 071°58'01" W; then south-west across Mystic River to a point on land in position at 41°21'36" N, 071°58'05" W near Pearl Street then south-east along the shoreline to a point on land in position at 41°21'31" N, 071°58'02" W near Park Place; then south-west along the shoreline to a point on land in position at 41°21'27" N, 071°58'07" W near Gravel Street; then south along the shoreline to a point on land in position 41°21'10" N, 071°58'14" W; then east across Mystic River to a point on land in position 41°21'09"N, 071°58'11"W; then north along the shoreline to a point on land in position 41°21'21" N, 071°58'02" W , then east along the shoreline to a point on land in position 41°21'25" N, 071°57'53" W near Holmes Street, then north along the shoreline to a point on land in position 41°21'38" N, 071°57'53" W near the Mystic Seaport Museum and then northwest along the shoreline back to point of origin (NAD 83).

(a) Enforcement period. This section will be enforced from 8 a.m. to 10 a.m. on July 14, 2019.

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 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.

“Official patrol vessels” may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) Special local regulations. (1) In accordance with the general regulations found in section 33 CFR 100.35, all non-event vessels transiting through the regulated area during the enforcement period shall travel at no wake speed or 6 knots, whichever is slower. Recreational vessels transiting in the regulated area shall not block or impede the transit of event participants, event safety vessels, or official patrol vessels and shall follow the directions given by event safety craft during the event. Commercial vessels will have right-of-way over event participants and event safety craft.

(2) All persons transiting through the regulated area shall maintain a minimum distance of 100 feet from the swimmers in the regulated area.

(3) Vessel operators desiring to deviate from these regulations should contact the COTP or a designated representative at (203)468-4401 (Sector Long Island Sound command center) or VHF channel 16 to obtain permission to do so.

(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.

Dated: June 5, 2019

K. B. REED,  
CAPTAIN, U. S. Coast Guard,  
Captain of the Port Long Island Sound

[FR Doc. 2019-13501 Filed: 6/24/2019 8:45 am; Publication Date: 6/25/2019]