



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2011-1000]

RIN 1625-AA00

Swim Events in the Captain of the Port New York Zone; Hudson River, East River, Upper New York Bay, Lower New York Bay; New York, NY

ACTION: Final Rule.

SUMMARY: The Coast Guard is establishing seven temporary safety zones for swim events within the Captain of the Port (COTP) New York Zone. These zones will be established on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. These temporary safety zones are necessary to protect the maritime public and event participants from the hazards associated with these events. Persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless authorized by the COTP New York or the designated representative.

DATES: This rule is effective in the Federal Register from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] through September 16, 2012. This rule will be

effective with actual notice for enforcement purposes from June 16, 2012, through [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2011-1000]. 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 Ensign Kimberly Farnsworth, Coast Guard; telephone (718)354-4163, e-mail Kimberly.A.Farnsworth@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

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
COTP	Captain of the Port

A. Regulatory History and Information

On April 16, 2012, we published a notice of proposed rulemaking (NPRM) entitled Swim Events in the Captain of the Port New York Zone in the Federal Register (77 FR 22525). We received no comments on the proposed rule. No public meeting was requested and none was held.

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. The NYC Triathlon Swim Clinic and the Iron Man Open Water Swim Clinics are scheduled to occur on June 16 and June 30, 2012, respectively. These two events will occur before 30 days has elapsed after the publication of the rule. The event sponsors are unable and unwilling to postpone these events because the dates of these events were chosen based on optimal tide, current, and weather conditions needed to promote the safety of swim participants. In addition, any change to the dates of the events would cause economic hardship on the marine event sponsors and negatively impact other activities being held in conjunction with these events, such as potentially causing numerous event participant cancellations.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 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.

Marine events are frequently held on the navigable waters within the COTP Sector New York Zone. The COTP has determined that swim events in close proximity to marine traffic pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, and large numbers of swimmers in the water has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this rule establishes temporary safety zones for the duration of each event.

This rule prevents vessels from entering into, transiting through, mooring or anchoring within the areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP, or the designated representative.

C. Discussion of Comments, Changes and the Final Rule

No comments were received. The Coast Guard made the following changes to this final rule that were not published in the NPRM:

The swim events listed in TABLE 1 of 165.T01-1000 were modified to now include rain dates. Rain dates are now included

for the following events: Iron Man Open Water Swim Clinics, Verrazano Bridge Swim, Rose Pitonof Swim, and Liberty to Freedom Swim. The sponsors advised that due to the limited reliability of weather forecast and predictions it was necessary to have rain dates in the event of unexpected adverse weather conditions.

In the NPRM, the Coast Guard proposed under Sec. 165.T01-1000(g) the following: "For all swim events listed in TABLE 1 to §165.T01-1000, vessels not associated with the event shall maintain a separation of at least 100 yards from the participants." The text in Sec. 165.T01-1000(g) now reads as follows: "For all swim events listed in the TABLE to §165.T01-1000, vessels not associated with the event that are permitted to enter the regulated areas in accordance with section (c), shall maintain a separation of at least 100 yards from the participants." We revised the text to help the public better understand our intentions and eliminate any confusion that the regulated areas listed in TABLE 1 of 165.T01-1000 are geographically fixed. The requirement for separation of at least 100 yards from each event participant is applicable to vessels that receive permission from the COTP to enter the regulated areas.

D. Regulatory Analyses

We developed this rule after considering numerous statutes

and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or 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's implementation of these temporary safety zones will be of short duration and designed to minimize the impact to vessel traffic on the navigable waters. These safety zones will only be enforced for a short duration. Furthermore, vessels may be authorized to transit the zones with permission of the COTP New York or designated representative.

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 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 and operators of vessels intending to transit, or anchor in the designated safety zones as listed in TABLE 1 of 165.T01-1000 during the enforcement period of each swim event.

These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons: vessels will only be restricted from safety zone areas for a short duration of time; vessels may transit in portions of the affected waterway except for those areas covered by the regulated areas as listed in TABLE 1 of 165.T01-1000. Notifications will be made to the local maritime community through 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 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 seven temporary safety zones on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. Persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless authorized by the COTP. 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, 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. 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which authorizes the Coast Guard to define Safety Zone Regulations.

2. Add §165.T01-1000 to read as follows:

§165.T01-1000 Swim Events in the Captain of the Port New York Zone, Hudson River, East River, Upper New York Bay, Lower New York Bay, New York, NY.

(a) Regulation. The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the swim events listed in the TABLE of 165.T01-1000. These regulations will be enforced for the duration of each swim event. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners, and Broadcast Notice to Mariners. First Coast Guard District Local Notice to Mariners can be found at <http://www.navcen.uscg.gov/>.

(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 Zone 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. 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.

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

(c) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 718-354-4353 (Sector New York command center) to obtain permission to do so.

(d) Spectators or other vessels shall not anchor, block, loiter within, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or the designated representative.

(e) 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.

(f) The COTP or the 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.

(g) For all swim events listed in the TABLE to §165.T01-1000, vessels not associated with the event that are permitted to enter the regulated areas in accordance with section (c), shall maintain a separation of at least 100 yards from the participants.

TABLE 1 TO §165.T01-1000

1.0		Hudson River
1.1	Iron Man Open Water Swim Clinics	• Date: June 30 and July 14, 2012 • Rain Date: July 1 and July 15, 2012 • Enforcement Period: 8:00 a.m. to 10:30 a.m. • Location site: All waters of the Hudson River in the vicinity of Ross Docks Camp Ground, bound by the following points: 40°51'41"N, 073°57'13"W; thence to 40°51'41"N, 074°56'12"W; thence to 40°54'00"N, 073°54'57"W; thence to 40°54'00.0"N, 073°56'06"W; thence along the shoreline to the point of origin.
1.2	NYC Triathlon Swim Clinic	• Date: June 17, 2012 • Rain Date: June 16 or June 24, 2012 • Enforcement Period: 10:00 a.m. to 11:30 a.m. • Location: All waters of the Hudson River

in the vicinity of Ross Docks Camp Ground, bound by the following points: 40°48'0.15"N, 073°58'30.59"W; thence to 40°48'19.17"N, 073°59'9.76"W; thence to 40°47'33.29"N, 073°59'43.51"W; thence to 40°47'12.76"N, 073°59'3.87"W thence along the shoreline to the point of origin.

2.0	Lower New York Bay	
2.1 Verrazano Bridge Swim	• Date: July 21, 2012 • Rain Date: July 22, 2012 • Enforcement Period: 12:30 p.m. to 1:30 p.m. • Location: All waters of the Lower New York Bay in the vicinity of the Verrazano Bridge, bound by the following points: 40°36'12.74"N, 074°3'12.92"W; thence to 40°35'59.20"N, 074°3'8.72"W; thence to 40°36'27.30"N, 074°2'3.101"W; thence to 40°36'32.91"N, 074°2'9.30"W; thence along the shoreline to the point of origin.	
3.0	East River, Upper New York Bay, Lower New York Bay	
3.1 Rose Pitonof Swim	• Date: August 18, 2012. • Rain Date: August 19, 2012 • Enforcement Period: 9:00 a.m. to 5:00 p.m. • Location: All waters of the East River, Upper and Lower New York Bays, bound by the following points: 40°44'11.55"N, 073°58'21.58"W; thence to 40°44'19.63"N, 073°57'45.25"W; thence to 40°34'10.43"N, 073°58'59.88"W; thence to 40°32'16.62"N, 074°2'34.30"W thence to 40°36'13.95"N, 074°3'8.58"W; thence to 40°38'38.81N, 074°4'15.14"W thence back to the point of origin.	
4.0	Upper New York Bay, Hudson River	

4.1	Liberty to Freedom Swim	• Date: September 15, 2012 • Rain Date: September 16, 2012 • Enforcement Period: 3:00 p.m. to 5:00 p.m. • Location: All waters of the East River, Upper and Lower New York Bays, bound by the following points: 40°41'24.15"N, 074°2'33.47"W; thence to 40°41'35.25"N, 074°1'10.95"W; thence to 40°42'48.91"N, 074°1'3.44"W; thence to 40°43'0.17"N, 074°1'47.99"W; thence to 40°41'27.55"N, 074°2'49.72"W thence back to the point of origin.
5.0	Upper New York Bay, Hudson River	
5.1	Brooklyn Bridge Swim	• Date: July 15, 2012. • Rain Date: NA • Enforcement Period: 7:15 a.m. to 9:15 a.m. • Location: All waters of the East River, bound by the following points: 40°42'17.04"N, 073°59'21.87"W; thence to 40°42'12.03"N, 073°59'46.17"W; thence to 40°42'24.48"N, 074°0'4.09"W; thence to 40°42'34.19N, 073°59'31.41"W; thence back to point of origin.
6.0	Upper New York Bay, Lower New York Bay	

6.1 Ederle Swim

- Date: August 18, 2012.
 - Rain Date: August 19, 2012
 - Enforcement Period: 10:00 a.m. to 7:30 p.m.
 - Location: All waters of the Hudson River, Upper and Lower New York Bays, bound by the following points:
40°42'48.13"N, 074°0'58.74"W; thence to
40°42'3.20"N, 073°59'54.84"W; thence to
40°36'32.70"N, 074°2'10.73"W; thence to
40°28'4.43N, 073°59'38.14"W; thence to
40°28'41.58"N, 074°0'55.27"W; thence to
40°38'38.77"N, 074°4'15.05"W; thence to
40°43'0.31"N, 074°1'48.11"W thence back
to point of origin.
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Dated: June 12, 2012

G. P. Hitchen,
Captain, U.S. Coast Guard
Acting Captain of the Port New York

[FR Doc. 2012-16784 Filed 07/09/2012 at 8:45 am; Publication

Date: 07/10/2012]