



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0730]

RIN 1625-AA00

Safety Zones; Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing two permanent safety zones on Lake Erie near Sandusky, OH. This action is necessary to provide for the safety of life and property on navigable waters and is intended to restrict vessel traffic during the swim portion of the Revolution 3 Triathlon, Lake Erie, Sandusky Bay, OH.

DATES: Comments and related materials must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0730 using any one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Fax: 202-493-2251.

Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries are accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6040, e-mail

Benjamin.B.Nessia@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

A. Public Participation and Information

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when the comment is successfully transmitted. A comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as 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.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting, but you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

Each year, the Revolution 3 Triathlon occurs at Cedar Point near Sandusky, OH. This event occurs each year for two consecutive days during the first or second week of September. During the first leg of the event, participants enter the water and swim along a predetermined course. While the primary course is on the eastern side of Cedar Point, an alternate location is on the western side of Cedar Point, in the vicinity of the Cedar Point Marina.

The likely combination of large numbers of inexperienced recreational boaters, possibly varying lake conditions and large number of swimmers in the water could easily result in serious injuries or fatalities. The Captain of the Port Detroit proposes to establish this safety zone to protect against such injuries and fatalities.

In the past, the Coast Guard has established temporary safety zones in coordination for this event. For example, temporary safety zones were established in rules published on September 13, 2010 (75 FR 55477), and September 8, 2011 (76 FR 55564). Because this event will recur annually, the Captain of the Port Detroit is proposing to establish a permanent safety zone and thus, alleviate the need to publish TFRs in the future.

C. Discussion of Proposed Rule

As suggested above, this proposed regulation is intended to ensure safety of the public and vessels during the Revolution 3 triathlon. This proposed rule will become effective 30 days after the final rule is published in the Federal Register. However, the safety zones will only be enforced annually for two consecutive days during the first or second week of September from 6:50 a.m. until 10:00 a.m., with exact dates to be determined annually.

The proposed safety zones for the Revolution 3

Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH, will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH within the swim courses located at position 41-29'-00.04"N 082-40'-48.16"W to 41-29'-19.28"N 082-40'-38.97"W to 41-29'-02.51"N 082-40'-20.82"W to 41-28'-45.52"N 082-40'-35.75"W then following the shoreline to the point of origin. These coordinates are North American Datum of 1983 (NAD 83). In the event that weather requires changing locations an alternate race course site will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41-28'-38.59"N 082-41'-10.51"W and 41-28'-17.25"N 082-40'-54.09"W running adjacent to the Cedar Point Marina. These coordinates are North American Datum of 1983 (NAD 83).

The Captain of the Port Detroit will use all appropriate means to notify the public when the safety zones in this proposal will be enforced. Consistent with 33 CFR 165.7(a), such means of may include, among other things, publication in the Federal Register, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement these safety zones in this section

are cancelled prematurely.

Entry into, transiting, or anchoring within the proposed safety zones during the period of enforcement is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this proposed 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 proposed 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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not

a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this proposed rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the Captain of the Port. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in the above portions of Lake Erie during the period that either of the proposed safety zones is being enforced.

These proposed safety zones will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the above Regulatory Planning and Review section. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. 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.

4. Collection of Information

This proposed rule would call for no 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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it 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 proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not affect 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed 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

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of safety zones and thus, is categorically excluded under

paragraph (34)(g) of the Instruction. A preliminary environmental analysis checklist supporting this determination is 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 proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 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 § 165.917 to read as follows:

§ 165.917 Safety Zones; Annual Swim Events in the Captain of the Port Detroit Zone

(a) Location. The following locations are designated

as safety zones: all waters of Lake Erie within positions 41-29'-00.04"N 082-40'-48.16"W to 41-29'-19.28"N 082-40'-38.97"W to 41-29'-02.51"N 082-40'-20.82"W to 41-28'-45.52"N 082-40'-35.75"W then following the shoreline to the point of origin. In the event that weather requires changing locations an alternate race course site will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41-28'-38.59"N 082-41'-10.51"W and 41-28'-17.25"N 082-40'-54.09"W running adjacent to the Cedar Point Marina. These coordinates are North American Datum of 1983 (NAD 83).

(b) Enforcement period. These safety zones will be enforced two consecutive mornings during the first or second week in September. Exact dates and times will be determined annually and published annually in the Federal Register via a Notice of Enforcement.

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

(1) "On-scene Representative" means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port Detroit to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other

actions authorized by the Captain of the Port.

(2) "Public vessel" means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) These safety zones are closed to all vessel traffic, excepted as may be permitted by the Captain of the Port Detroit or his designated representative. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a

safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(e) Exemption. Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(f) Waiver. For any vessel, the Captain of the Port Detroit or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(g) Notification. The Captain of the Port Detroit will notify the public that the safety zones in this section are or will be enforced by all appropriate means to the affected segments of the public including publication in the FEDERAL REGISTER as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or

Local Notice to Mariners. The Captain of the Port will
issue a Broadcast Notice to Mariners notifying the public
when enforcement of the safety zone is cancelled.

Dated: August 6, 2012

J.E. OGDEN
Captain, U.S. Coast Guard
Captain of the Port Detroit

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