



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0370]

RIN 1625-AA00

Safety Zone; Annual Roy Webster Cross-Channel Swim, Columbia River, Hood River,

OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Columbia River in Hood River, OR. This safety zone is necessary to help ensure the safety of the maritime public during a cross channel swim and will do so by prohibiting unauthorized persons and vessels from entering the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

DATES: This rule is effective on September 5, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0370 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 Ken Lawrenson, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email msupdxwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 20, 2016, the Hood River County Chamber of Commerce notified the Coast Guard that it will be conducting a cross-channel swim on the Columbia River in Hood River, OR for the Annual Roy Webster Cross-Channel Swim. In response, on May 16, 2016 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Annual Roy Webster Cross-Channel Swim, Columbia River, Hood River, OR (81 FR 30503). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this marine event. During the comment period that ended on June 16, 2016 we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Sector Columbia River (COTP) has determined that potential hazards associated with cross-channel swims could be a safety concern for the event participants, any other mariners transiting the area during the event hours, and a potential threat to the marine environment. The purpose of this rule is to ensure the safety of event participants, the marine environment and the protection of the navigable waterway before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 16, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone that will be enforced from 6 a.m. to noon on Labor Day each year. The safety zone will encompass all navigable waters of the Columbia River between River Mile 169 and River Mile 170. The duration of the zone is intended to ensure the safety of vessels, participants and these navigable waters before, during, and after the scheduled cross-channel swim. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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, short duration,

and the event's long history. Commercial vessel traffic will be able to transit the area if they obtain permission from the COTP or a designated representative. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

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 transit the safety zone 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 M16475.1D, 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 a safety zone lasting approximately 6 hours annually that will prohibit entry within a specific section of the Columbia River in the vicinity of Hood River, OR. It 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.

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 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, 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; 50 U. S. C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add, under the undesignated center heading Thirteenth Coast Guard District, § 165.1342 to read as follows:

§ 165.1342 Annual Roy Webster Cross-Channel Swim, Columbia River, Hood River,
OR.

(a) *Regulated area.* The following regulated area is a safety zone. The safety zone will encompass all waters of the Columbia River between River Mile 169 and River Mile 170.

(b) *Definitions.* As used in this section—

Designated representative means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels,

and Federal, state, and local officers designated by or assisting the Captain of the Port Sector Columbia River in the enforcement of the regulated area.

Non-participant person means a person not registered as a swimmer in the Roy Webster Cross-Channel Swim held on the Columbia River in the vicinity of Hood River, OR, each Labor Day.

(c) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by Captain of the Port, Sector Columbia River or a designated representative.

(1) Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Sector, Columbia River or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port, Sector Columbia River or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Sector, Columbia River or a designated representative.

(2) The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Enforcement period.* This safety zone will be enforced on Labor Day of each year, between the hours of 6 a.m. and Noon.

Dated: July 29, 2016

W. R. TIMMONS,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Columbia River.
[FR Doc. 2016-18589 Filed: 8/4/2016 8:45 am; Publication Date: 8/5/2016]