



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0117]

RIN 1625-AA00

Safety Zone; Lady Liberty Sharkfest Swim; Upper New York Bay,
Liberty Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a swim event on the navigable waters of Upper New York Bay in the vicinity of Liberty Island, New York. This temporary safety zone is necessary to protect the maritime public and event participants from the hazards associated with swim events taking place in a high vessel traffic area. This rule is intended to restrict all vessels from a portion of Upper New York Bay before and during the swim event.

DATES: This rule is effective on June 29, 2014 from 7:00 a.m. to 10:00 a.m.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0117]. 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 Lieutenant Junior Grade Kristopher Kesting, Coast Guard; telephone (718)354-4154, e-mail Kristopher.R.Kesting@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard published a notice of proposed rulemaking (NPRM) entitled Lady Liberty Sharkfest Swim; Upper New York Bay, Liberty Island, NY on April 25, 2014 in the Federal Register (79 FR 22924). 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 final publication in the Federal Register. The event sponsor is unable and unwilling to postpone this event because the date of this event was chosen based on optimal tide, current, and weather conditions needed to promote the safety of swim participants. In addition, any change to the date of the event would cause economic hardship on the marine event sponsor. The rule must become effective on the date specified in order to provide for the safety of the swimmers and vessels operating in the area near this event. Delaying this rule would be impracticable and contrary to the public interest, and would expose swimmers and vessels to the hazards associated with the swim events.

B. Basis and Purpose

The legal basis for this 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The Captain of the Port (COTP) has determined that swimming 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 temporary rule establishes a temporary safety zone for the duration of the event.

This rule prevents vessels from entering into, transiting through, mooring or anchoring within the area specifically designated as the safety zone during the period of enforcement unless authorized by the COTP, or the designated representative.

C. Discussion of Comments, Changes and the Final Rule

No comments were received and no changes were made to the final rule.

The swim event will occur from approximately 7:30 a.m. until approximately 9:30 a.m. on June 29, 2014. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the swim event, this zone will be effective from approximately 7:00 a.m. until approximately 10:00 a.m. on June 29, 2014.

Vessels will still be able to transit the surrounding area and may be authorized to transit through the safety zone with permission from the COTP or a designated representative. The COTP does not anticipate any negative impact on vessel traffic due to this safety zone.

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 enforcement of this safety zone will be of short duration, lasting only 3 hours. The safety zone will restrict access to only a small portion of the navigable waterways of the Upper New York Bay. Vessels will be able to navigate around the safety zone. Furthermore, vessels may be authorized to transit through the safety zone with the permission of the COTP.

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 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 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.

(1) 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 a portion of the navigable waters in the vicinity of the marine event during the effective period.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for a short period, vessel traffic could pass safely around the safety zone, and the Coast Guard will notify mariners before activating the zone by appropriate means which may include but are not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

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 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 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 establishment of a temporary safety zone. This rule may be 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.

2. Add §165.T01-0117 to read as follows:

§165.T01-0117 Safety Zone; Lady Liberty Sharkfest Swim; Upper New York Bay, Liberty Island, NY.

(a) Regulated Area. The following area is a temporary safety zone: all navigable waters of the Upper New York Bay bound by a line drawn from position 40° 42'44.82"N, 074° 02'18.03"W, east to position 40° 42'28.86"N, 074° 01'30.22"W, south to position 40° 42'12.24"N, 074° 02'18.22"W, west to position 40° 41'35.38"N, 074° 03'12.61"W, then north along the shoreline back to the point of origin.

(b) Enforcement Period. This rule will be enforced from approximately 7:00 a.m. to 10:00 a.m. on June 29, 2014.

(c) 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. 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.

(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.

(d) Regulations.

(1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for support vessels provided by the event sponsor, will be allowed to transit the safety zone without the permission of the COTP.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

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

Dated: June 7, 2014.

G. Loebel,
Captain, U.S. Coast Guard
Captain of the Port New York

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06/24/2014]