



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100, 165

Docket Number USCG-2017-0224

RIN 1625-AA08, AA00

Special Local Regulations; Safety Zones; Recurring Marine Events in Sector Columbia River

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a special local regulation in the Coast Guard Captain of the Port Columbia River Zone for recurring marine events. During the recurring events, these regulated areas would be activated and would restrict vessels from portions of the waterway. These events were previously published as safety zones, temporary safety zones or individual regulated areas and have been revised and consolidated into a single as special local regulation in order to expedite public notification of events and ensure the protection of the maritime public from hazards associated with the annual events. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material 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-2017-0224 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION

section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail LCDR Laura Springer, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail msupdxwwm@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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

**II. Background, Purpose, and Legal Basis**

Swim events and marine events are held on an recurring basis on the navigable waters within the Coast Guard COTP Columbia River Zone. In the past, the Coast Guard established special local regulations with regulated areas and safety zones for these recurring events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these events. The Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from these annually recurring events.

This proposed rule would consistently apprise the public in a timely manner through permanent publication in Title 33 of the Code of Federal Regulations. The table in this proposed rule would list each annual recurring event requiring a regulated area as administered by the Coast Guard.

By establishing permanent regulations containing these events the Coast Guard would eliminate the need to establish temporary rules for events that occur on an annual basis and thereby limit the costs associated with cumulative regulations.

This rulemaking would remove, add, and consolidate regulations to better meet the Coast Guard's intended purpose of ensuring safety during these events. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231 and 1233.

### **III. Discussion of Proposed Rule**

The Coast Guard proposes to revise and rename 33 CFR 100.1302 to cover marine events within the Captain of the Port Zone Columbia River. We also propose to remove §§ 100.1303 (Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races), 100.1305 (Richland, Washington, west coast outboard championship hydro races), 165.1341 (Portland Dragon Boat Races, Portland, OR), and 165.1342 (Annual Roy Webster Cross-Channel Swim, Columbia River, Hood River, OR).

These proposed changes will convert two existing safety zones (those currently in §§ 165.1341 and 165.1342) and temporary safety zones established annually for four events (The Big Float, Swim the Snake, Richland Regatta, and Columbia Crossing) into regulated areas in § 100.1302. This is intended to consolidate and simplify our existing special local regulations. We are removing the West Coast Outboard Championship Hydro races regulations in § 100.1305 because that race has not been held for a number of years.

By establishing a single permanent regulation containing these events, the Coast Guard will eliminate the need to establish temporary rules for events that occur on an annual basis. This provides opportunity for the public to comment while limiting the unnecessary burden of continually establishing temporary rules every year.

Additionally, this rule proposes to reorganize and consolidate existing Sector Columbia River COTP Zone marine event regulations in 33 CFR part 100 and marine event safety zones under 33 CFR part 165. This action will eliminate the burden and confusion caused by the

current configuration of numerous individual regulations spread across two CFR parts.

As large numbers of spectator vessels and marine traffic are expected to congregate around the event location, the regulated areas are needed to protect both spectators and participants from the safety hazards associated with the event. During the enforcement period of the regulated areas, persons and vessels would be prohibited from entering, transiting through, remaining, anchoring or mooring within the zone unless specifically authorized by the COTP or the designated representative. The Coast Guard may be assisted by other Federal, State and local agencies in the enforcement of these regulated areas. These events are listed below in the text of the regulation.

Certain special local regulations are listed without known dates or times. Coast Guard Sector Columbia River will cause notice of the enforcement of these regulated areas to be made by all appropriate means to affect the widest publicity among the effected segments of the public, including publication in the **Federal Register**, Local Notice to Mariners and Broadcast Notice to Mariners.

#### **IV. Regulatory Analyses**

We developed this proposed 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 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory

action,” under Executive Order 12866. Accordingly, the NPRM 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.

The Coast Guard has previously promulgated special local regulations or safety zones, in 33 CFR parts 100 and 165, for all event areas contained within this proposed regulation and has not received notice of any negative impact caused by any of the safety zones or special local regulations. By establishing a permanent regulation containing all of these events, the Coast Guard will eliminate the need to establish individual temporary rules for each separate event that occurs on an annual basis, thereby limiting the costs of cumulative regulations.

Vessels will only be restricted from special local regulation areas for a short duration of time. Vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas. Notifications of exact dates and times of the enforcement period will be made through notices of enforcements published in the **Federal Register**. In addition, we will inform the local maritime community via the Local Notice to Mariners, Broadcast Notice to Mariners, or both. No new or additional restrictions would be imposed on vessel traffic.

#### 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated areas may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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.

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. 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. 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

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves regulated areas for swim events and other marine events. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2-1

of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and 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 proposed 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.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal

Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**List of Subjects in 33 CFR Part 100 and Part 165**

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways, Harbors, Security measures

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 and 165 as follows:

**PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. Revise § 100.1302 to read as follows:

**§100.1302 Special Local Regulations; Marine Events within the Captain of the Port Zone Columbia River.**

This section applies to the marine events listed in Table 1 of this section. The regulations in this section will be enforced for the duration of each event, on or about the dates indicated in Table 1 of this section. Annual notice of the exact dates and times of the effective period of the regulations in this section with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be provided to the local maritime community through the Local

Notice to Mariners, Broadcast Notice to Mariners, or both, well in advance of the events. If the event does not have a date listed, then the exact dates and times of the enforcement will be announced through a Notice of Enforcement in the **FEDERAL REGISTER**. Mariners should consult the **FEDERAL REGISTER** or their LNM to remain apprised of minor schedule or event changes. Thirteenth Coast Guard District LNM can be found at: <http://www.navcen.uscg.gov/>. The application requirements of §100.15 apply to all marine events listed in the Table of this section.

(a) The Coast Guard may patrol each event area under the direction of a designated Coast Guard Patrol Commander (PATCOM). PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM." Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Columbia River.

(b) PATCOM may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(c) PATCOM 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. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior

(d) Vessels may not transit the regulated areas without PATCOM approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(e) Spectators or other vessels shall not anchor, block, loiter, 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 LNM, unless authorized by an official patrol vessel.

**TABLE 1**

[All coordinates listed in the Table reference Datum NAD 1983]

<b>No.</b>	<b>Date</b>	<b>Event</b>	<b>Sponsor</b>	<b>Location</b>
1	First or second weekend in June	Rose Fest Dragon Boat Races	Portland-Kaohsiung Sister Association	Portland, OR. Regulated area includes all waters of the Willamette River shore to shore, bordered on the north by the Hawthorne Bridge, and on the south by the Marquam Bridge
2	One day in May or June	Spring Testing Hydroplane races	Tri-Cities Water Follies Association	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
3	Second weekend in June	Richland Regatta Hydroplane races	Northwest Power Boat Association	Richland, WA. Regulated area includes all navigable waters of the Columbia River in the vicinity of Howard Amon Park, between River Miles 337 and 338
4	Last Tuesday through Sunday in July	Kennewick Hydroplane Races	Tri-Cities Water Follies Association	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river

				approximately 2.0 miles and terminating at the northern end of Wade Island.
5	One Saturday in July	The Big Float, group inner-tube float	Human Access Project	Portland, OR. Regulated area includes all navigable waters of the Willamette River, in Portland, Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45° 30' 50" N; 122° 40' 21" W, and running south to the Marquam Bridge at approximate location 45° 30' 27" N; 122° 40' 11" W.
6	Second Saturday in August	Swim the Snake	Blue Mountain Resource Conservation and Development	Perry, WA. Regulated area includes all navigable waters, bank-to-bank of the Snake River, 500 yards upstream and 500 yards downstream from the Washington State Highway 261 Bridge at the approximate position of 46°35'23" N; 118°13'10" W
7	Annually on Labor Day	Roy Webster Cross Channel Swim	Hood River County Chamber of Commerce	Hood River, OR. Regulated area includes all waters of the Columbia River between River Mile 169 and River Mile 170
8	First or second weekend in September	Portland Dragon Boat Races	DragonSports USA	Portland, OR. Regulated area includes the western side of the Willamette River extending from Tom McCall Waterfront Park between the Hawthorne and Marquam Bridges, Portland, OR: line one starting at 45-30'49" N/122-40'24" W then heading east to 45-30'49"

				N/122-40'22" W then heading south to 45-30'29" N/122-40'08" W then heading west to 45-30'26" N/122-40'14" W then heading north ending at 45-30'49"N/122-40'24" W.
9	First Saturday after Labor Day weekend	Columbia Crossing Swim	3 Rivers Road Runners	Pasco, WA. Regulated area includes all navigable waters, bank-to-bank of the Columbia River in Pasco, Washington, between river mile 332 and river mile 335.

§§ 100.1303 and 100.1305 [Removed]

3. Remove §§ 100.1303 and 100.1305

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

4. 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; Department of Homeland Security Delegation No. 0170.1.

§§ 165.1341 and 165.1342 [Removed]

5. Remove §§ 165.1341 and 165.1342

Dated: April 21, 2017.

B. C. MCPHERSON,

CAPT, U.S. Coast Guard,

Acting Commander, Thirteenth Coast Guard District.

[FR Doc. 2017-09368 Filed: 5/8/2017 8:45 am; Publication Date: 5/9/2017]