



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0580]

RIN 1625-AA00

Safety Zone; Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Lake Erie. This action is necessary to provide for the safety of life on navigable waters near Cleveland, OH, during the Tri CLE Rock and Roll Run which will be held on August 11 and 12, 2023. This rule will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Buffalo.

DATES: This rule is effective from 11:45 a.m. on August 11, 2023, through 12:15 p.m. on August 12, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0580 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Jared Stevens, Waterways Management Division, MSU Cleveland, U.S. Coast Guard; telephone 216-937-0124, email Jared.M.Stevens@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
COTP	Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because insufficient time remains before the event to publish an NPRM and receive public comments prior to the event.

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**. Delaying the effective date of this rule to wait for a comment period to run would be contrary to the public interest by inhibiting the Coast Guard’s ability to protect participants in these navigable waters before, during, and after the swim portion of the Tri CLE Rock and Roll Run triathlon.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Buffalo has determined a safety zone is needed to protect swimmers on August 11 and 12, 2023 who will be participating in the triathlon located in the North Coast Harbor in Cleveland, Ohio.

IV. Discussion of the Rule

This rule establishes a safety zone from 11:45 a.m. through 2:15 p.m. on August 11, 2023, and again from 4:45 a.m. through 12:15 p.m. on August 12, 2023. The safety zone will cover all navigable waters in the North Coast Harbor and into the East Basin Channel on Lake Erie in Cleveland, OH. The zone may require enforcement beyond the stated times in the event the triathlon runs into unforeseen delays. The boundaries of the safety zone will form a rectangle with the four corners of the polygon located in the following positions: (1) 41° 30' 41" N, 081° 42' 01" W; (2) 41° 30' 47" N, 081° 41' 53" W; (3) 41° 30' 32" N, 081° 41' 39" W; (4) 41° 30' 27" N, 081° 41' 47" W (NAD 83).

The COTP Buffalo has determined a safety zone is needed to protect participants before, during, and after the swim portion of the Tri CLE Rock and Roll Run triathlon. No vessel or person would 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. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based the need to ensure the safety of participants in these navigable waters before, during, and after the swim portion of the Tri CLE Rock Roll Run triathlon.

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 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 (Pub. L. 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 call or email 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.

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 Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 establishment of a temporary safety zone intended to ensure the safety of participants in these navigable waters before, during, and after the swim portion of the Tri CLE Rock Roll Run triathlon. It is categorically excluded from further review under paragraph L63(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3

2. Add § 165.T09-0580 to read as follows:

§ 165.T09-0580. Safety Zone; Tri CLE Rock and Roll Run, Lake Erie,

Cleveland, OH.

a. *Location.* Cleveland, OH. All U.S. waters of Lake Erie and Cleveland Harbor within a rectangle with the four corners of the polygon located in the following positions: (1) 41° 30' 41" N, 081° 42' 01" W; (2) 41° 30' 47" N, 081° 41' 53" W; (3) 41° 30' 32" N, 081 41' 39" W; (4) 41° 30' 27" N, 081° 41' 47" W (NAD 83).

b. *Enforcement Period.* This section will be enforced from 11:45 a.m. through 2:15 p.m. on August 11, 2023, and from 4:45 a.m. through 12:15 p.m. on August 12, 2023.

c. *Definitions.* *Official Patrol Vessel* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Buffalo, (COTP) in the enforcement of the regulations in this section. *Participant* means all persons and vessels attending the event.

d. *Regulations.*

(1) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM."

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state or local law enforcement and sponsor provided vessels designated or assigned by the COTP Sector Buffalo, to patrol the event.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and

will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(4) No spectator shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The Patrol Commander may forbid and 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 directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated areas specified in this chapter, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

Dated: July 25, 2023.

M. I. Kuperman,
Captain, U.S. Coast Guard,
Captain of the Port Buffalo.