

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 100**

[Docket No. USCG–2010–0675]

RIN 1625-AA08

**Special Local Regulation; Marine Events Within the Captain of the Port Sector Boston Zone****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations within the Captain of the Port Sector Boston Zone for several swim events and power boat races. These special local regulations are necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring or anchoring within these zones is prohibited unless authorized by the Captain of the Port Sector Boston.

**DATES:** This rule is effective in the Code of Federal Regulations on August 5, 2010 through 11:59 p.m. on August 29, 2010. This rule is effective with actual notice for purposes of enforcement from 7 a.m. on July 25, 2010 through 11:59 p.m. on August 29, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0675 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0675 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail MST1 David Labadie, Waterways Management Division at Coast Guard Sector Boston; telephone (617) 223–5768, e-mail [David.J.Labadie@uscg.mil](mailto:David.J.Labadie@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

The Coast Guard is issuing this temporary final 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 the Coast Guard did not receive notification of the specific location or planned dates for the events in sufficient time to issue a NPRM without delaying this rulemaking. Delaying the effective date by first publishing a NPRM and holding a comment period would be contrary to the rule’s objectives of ensuring safety of life on the navigable waters during these scheduled events as immediate action is needed to protect persons and vessels from the hazards associated with participation in these marine events. For the same reasons, the Coast Guard also finds, under 5 U.S.C. 553(d)(3), that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Basis and Purpose**

This temporary rule is necessary to ensure the safety of vessels and spectators from hazards associated with marine events. The Captain of the Port Boston has determined that events in close proximity to watercraft and waterfront structures pose a significant risk to public safety and property. The likely combination of a large number of participants in close proximity to recreational vessels and spectators poses significant risks of serious injuries or fatalities. Establishing special local regulations around the location of these events will help ensure the safety of persons and property and help minimize the associated risks.

The Coast Guard has ordered safety zones or special local regulations for these events in previous years and has not received public comments or concerns regarding impact to waterway traffic from these annual events.

**Discussion of Rule**

This rule establishes temporary special local regulations on:

(1) The Charles River between the Longfellow Bridge and the Harvard Bridge from 8 a.m. through 9 a.m. on July 25, 2010;

(2) The Merrimack River near Newburyport, MA within a 400 yard radius of 42°80.4' N, 070°85.4' W from 3 p.m. through 5 p.m. on July 31, 2010;

(3) Western Harbor near Gloucester, MA starting at the beach at position 42°36'34" N, 070°40'02" W, thence to 42°36'29" N, 070°40'04" W, thence to 42°36'28" N, 070°40'00" W, thence to the beach at position 42°36'33" N, 070°39'58" W from 10 a.m. through 11 a.m. on August 8, 2010;

(4) Gloucester Harbor near Gloucester, MA within a 400 yard radius of approximate position 41°35'35" N, 070°39'45" W from 9 a.m. through 12 p.m. on August 21, 2010; and,

(5) The Merrimack River between the Interstate 495 Highway Bridge and the Haverhill-Groveland SR97/113 Bridge from 12 p.m. on August 28 through 5 p.m. on August 29, 2010.

This rule is necessary to ensure the safety of participants, spectators and vessels during annual swim and high speed races that may pose a hazard to the public in the Captain of the Port Boston area of responsibility. The regulated areas will be enforced immediately before, during, and after the events.

The Captain of the Port will inform the public about the details of each swim and high speed race covered by these special local regulations using a variety of means, including, but not limited to, Broadcast Notices to Mariners and Local Notices to Mariners.

All persons and vessels must comply with the instructions of the Captain of the Port Boston or designated on scene patrol personnel. Entry into, transiting through, mooring or anchoring within any of the regulated areas is prohibited unless authorized by the Captain of the Port Boston or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

**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.

**Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated areas will be of limited duration, they

cover only a small portion of the navigable waterways, and the events are designed to avoid, to the extent possible, deep draft, fishing, and recreational boating traffic routes. In addition, vessels requiring entry into a regulated area may be authorized to do so by the Captain of the Port.

#### **Small Entities**

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

This rule will affect the following entities, some of which might be small entities: The owners and operators of vessels intending to enter into, transit through, moor or anchor within any of the regulated areas during the enforcement periods.

These special local regulations will not have a significant economic impact on a substantial number of small entities because the regulated areas will be of limited duration, they cover only a small portion of the navigable waterways, and the events are designed to avoid, to the extent possible, deep draft, fishing, and recreational boating traffic routes. In addition, vessels requiring entry into a regulated area may be authorized to do so by the Captain of the Port.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

#### **Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **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 rule under that Order and have determined that it does not have implications for federalism.

#### **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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **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.

#### **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.

#### **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.

#### **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.

#### **Energy Effects**

We have analyzed this 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.

#### **Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

#### **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 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h) of the Instruction. An environmental analysis checklist and categorical exclusion determination are

available in the federal docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 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. Add § 100.35–T01–0675 to read as follows:

#### § 100.35–T01–0675 Special Local Regulations; Summer Marine Events, Coastal Massachusetts.

(a) *General.* Special local regulations are established for the following marine events:

(1) Charles River One Mile Swim, Charles River, Boston, MA.

(i) *Location.* All waters of the Charles River, from surface to bottom, between the Longfellow Bridge and the Harvard Bridge.

(ii) *Enforcement Date.* This regulation will be enforced from 8 a.m. through 9 a.m. on July 25, 2010.

(2) Joppa Flats Open Water Mile, Merrimack River, Newburyport, MA

(i) *Location.* All waters of the Merrimack River, from surface to bottom, within a 400 yard radius of position 42°80.4' N; 070°85.4' W.

(ii) *Enforcement Date.* This regulation will be enforced from 3 p.m. through 5 p.m. July 31, 2010.

(3) Gloucester Fisherman Triathlon, Western Harbor, Gloucester, MA.

(i) *Location.* All waters of Western Harbor, from surface to bottom, starting at the beach at position 42°36'34" N 070°40'02" W, thence to 42°36'29" N 070°40'04" W, thence to 42°36'28" N 070°40'00" W, thence to the beach at position 42°36'33" N 070°39'58" W.

(ii) *Enforcement Date.* This regulation will be enforced from 10 a.m. through 11 a.m. on August 8, 2010.

(4) 32nd Annual Celebrate the Clean Harbor Swim, Gloucester Harbor, Gloucester, MA.

(i) *Location.* All waters of Gloucester Harbor, from surface to bottom, within a 400 yard radius of approximate position 41°35'35" N 070°39'45" W.

(ii) *Enforcement Date.* This regulation will be enforced from 9 a.m. through 12 p.m. on August 21, 2010.

(5) Haverhill River Run, Merrimack River, Haverhill, MA.

(i) *Location.* All waters of the Merrimack River, from surface to

bottom, between the Interstate 495 Highway Bridge and the Haverhill-Groveland SR97/113 Bridge.

(ii) *Enforcement Date.* This regulation will be effective from 12 p.m. on August 28, 2010 to 5 p.m. on August 29, 2010. This regulation will be enforced daily from 12 p.m. to 5 p.m. on both August 28th and 29th, 2010.

#### (b) Regulations.

(1) In accordance with the general regulations in Section 100.35 of this part, entry into, and transiting or anchoring within any of these special local regulation areas is prohibited unless authorized by the Captain of the Port Boston or his designated on-scene representative.

(2) These special local regulation areas are closed to all vessel traffic, except as may be permitted by the Captain of the Port Boston or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Boston is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston to act on his behalf. The on-scene representative of the Captain of the Port Boston will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within any of the special local regulation areas must contact the Captain of the Port Boston or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the special local regulation areas must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: July 23, 2010.

**John N. Healey,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

[FR Doc. 2010–19291 Filed 8–4–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2010–0702]

#### Drawbridge Operation Regulations; Newark Bay, NJ, Maintenance

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Lehigh Valley Railroad Bridge across Newark Bay, mile 4.3, at Newark, New Jersey. This deviation allows the bridge to remain in the closed position on three Mondays to facilitate scheduled maintenance.

**DATES:** This rule is effective in the CFR from August 5, 2010 through through 2 p.m. on August 16, 2010, and with actual notice for purposes of enforcement from 9 a.m. on August 2, 2010, with actual notice through 2 p.m. on August 16, 2010.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0702 and are available online at <http://www.regulations.gov>, inserting USCG–2010–0702 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the 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, 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 Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Lehigh Valley Railroad Bridge, across Newark Bay at mile 4.3, Newark, New Jersey, has a vertical clearance in the closed position of 35 feet at mean high water and 39 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.5.

The owner of the bridge, Conrail, requested a temporary deviation from the regulations to facilitate scheduled bridge maintenance, lift cable replacement.

Under this temporary deviation the Lehigh Valley Bridge may remain in the closed position on three Mondays, August 2, 9, and 16, 2010, between 9 a.m. and 2 p.m. to facilitate lift cable replacement.

Waterway users were advised of the requested bridge closures and offered no objection.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.