

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Juan 07–039]

RIN 1625–AA00

Safety Zone; San Juan Harbor Swim, Bahia de San Juan, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for an annual swimming event held in San Juan Harbor. This safety zone is necessary to protect swimmers and provide for the safety of life on navigable waters by excluding vessels from transiting the swim area.

DATES: Comments and related material must reach the Coast Guard on or before June 13, 2007.

ADDRESSES: You may mail comments and related material to Commander, Sector San Juan, Attn: Prevention Operations Department (spw), 5 Calle La Puntilla, San Juan, PR 00901–1819. Sector San Juan Prevention Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector San Juan, Prevention Operations Department, Facilities & Waterways Division, between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant junior grade Alison M. Schmidt, Sector San Juan, Prevention Operations Department, Facilities & Waterways Division, at (787) 289–2086.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Juan 07–039), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all

comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector San Juan at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This rule is required to provide for the safety of life in the port of San Juan because each year numerous swimmers cross the navigable channel during an organized cross-harbor swim. To prevent injury or loss of life, a safety zone is required to maintain a safe distance between the swimmers and vessel traffic. This rule creates a safety zone that will prohibit entry by non-participating vessels during the event without the authorization of the Captain of the Port (COTP) San Juan.

Discussion of Proposed Rule

This proposed rule would establish a Safety Zone around the course of the cross-harbor swim. The safety zone includes all waters bound by an imaginary line connecting the following points: Point 1, La Puntilla Final, Coast Guard Base at position 18–27′33″ N, 066–07′00″ W, then south to Point 2, Cataño Ferry Pier at position 18–26′36″ N, 066–07′00″ W, then east along the Cataño shoreline to Point 3, Punta Cataño at position 18–26′40″ N, 066–06′48″ W, then north to Point 4, Pier 1 in San Juan at position 18–27′40″ N, 066–06′49″ W, then back along the shoreline to origin at Point 1. This rule will be effective during daylight hours, defined as the hours between sunrise and sunset, on Sunday, July 22, 2007, or on a designated rain date. Specific hours of the event, as well as any rain date, will be published in a Marine Safety Information Bulletin and announced on VHF–FM in a Broadcast Notice to Mariners. Persons and vessels may request permission to enter the safety zone on VHF–FM channel 16 or via phone at (787) 289–2041.

Regulatory Evaluation

This proposed 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This rule would only affect those vessels that would attempt to transit that portion of San Juan Harbor during daylight hours on that day. Vessels may receive permission to transit the safety zone area on a case-by-case basis with the permission of the COTP San Juan.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. Although the safety zone will apply to an area of the harbor encompassing the entire width of the Anegado Channel, it will only be in effect for a portion of one day and traffic will be allowed to pass through the zone with the permission of the Coast Guard COTP San Juan. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the channel.

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 to the office under **ADDRESSES** explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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 office under **ADDRESSES**. 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 proposed rule would call 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 proposed 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 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.

Taking of Private Property

This proposed rule would not effect 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this proposed 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 proposed 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 Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

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 proposes to amend 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07–039 to read as follows:

§ 165.T07–039 Safety Zone; San Juan Harbor Swim, Bahía de San Juan, San Juan, PR.

(a) *Regulated Area.* The Coast Guard is establishing a temporary safety zone on the navigable waters of San Juan Harbor for an organized, cross-harbor swim. The safety zone is rectangular in shape, starting at Point 1, La Puntilla Final, Coast Guard Base at position 18–27’33” N, 066–07’00” W, then south to Point 2, Cataño Ferry Pier at position 18–26’36” N, 066–07’00” W, then east along the Cataño shoreline to Point 3, Punta Cataño at position 18–26’40” N, 066–06’48” W, then north to Point 4, Pier 1 in San Juan at position 18–27’40” N, 066–06’49” W, then back along the shoreline to origin at Point 1.

(b) *Definitions.* The following definitions apply to this section:

(1) *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 (COTP) San Juan in the enforcement of the safety zone.

(2) *Daylight hours* means the hours between sunrise and sunset.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entering, anchoring, mooring or transiting in the Regulated Area is prohibited during daylight hours on Sunday, July 22, 2007, or on a

designated rain date unless specifically authorized by the Coast Guard COTP San Juan or a designated representative. If necessary, a rain date for the event shall be designated and publicized in a Marine Safety Information Bulletin and announced on VHF-FM in a Broadcast Notice to Mariners. The specific hours

of the event shall be publicized in the same manner. Persons and vessels may request permission to enter the safety zone on VHF-FM channel 16 or via phone at (787) 289-2041.

(d) *Effective Date.* This rule is effective during daylight hours on Sunday, July 22, 2007, or a designated rain date. If necessary, the rain date will

be announced at least 48 hours prior to being effective.

Dated: April 22, 2007.

J.E. Tunstall,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

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