

**DEPARTMENT OF HOMELAND  
SECURITY**
**Coast Guard**
**33 CFR Part 100**
**[USCG–2009–0520]**
**RIN 1625-AA08**
**Special Local Regulation, Fran Schnarr  
Open Water Championships,  
Huntington Bay, NY**
**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard has established a temporary Special Local Regulation (SLR) for the waters of Huntington Bay, New York for the 2009 Fran Schnarr Open Water Championships. This SLR is necessary to provide for the safety of life on the navigable waters of Huntington Bay by protecting swimmers from the hazards imposed by vessel traffic. This action is intended to increase the safety of the swimmers by limiting vessel access to a portion of Huntington Bay, New York during the swim event being held on July 12th, 2009. Entry into this area will be prohibited unless authorized by the Captain of the Port Long Island Sound or the designated on-scene patrol personnel.

**DATES:** This rule is effective from 7:15 a.m. through 11:30 a.m. on July 12th, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0520 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0520 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. 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 MSTC Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, e-mail: [christie.m.dixon@uscg.mil](mailto:christie.m.dixon@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 while this is an annual event, the dates and proposed race course were not made available to the Coast Guard in sufficient time to allow for a notice and comment period. A cancellation of the swim event in order to provide for a notice and comment period is impractical and contrary to the public interest in holding this 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**. Immediate action is needed to restrict and control maritime traffic transiting the waters of Huntington Bay, New York during the swim event in order to ensure the safety of the participants and spectators. A delay or cancellation of the swim event in order to accommodate an effective date 30 days after publication is contrary to the public’s interest in holding this event.

**Background and Purpose**

Over the last several years, Metropolitan Swimming, Inc. has hosted an annual open water championship swim on the waters of Huntington Bay, NY during a single day in July. This swim has historically involved up to 150 swimmers and accompanying safety craft. Currently there is no regulation in place to protect the swimmers or safety craft from the hazards imposed by passing water traffic and other water related activities.

To ensure the continued safety of the swimmers, safety craft and the boating public, the Coast Guard has established a temporary special local regulation around the race course for the duration of the race, from 7:15 a.m. to 11:30 a.m. on July 12th, 2009.

**Discussion of Rule**

The Coast Guard has established this temporary special local regulation on the navigable waters of Huntington Bay, NY to exclude all unauthorized persons and vessels from approaching within

100 yards of the planned race course which consists of the following points: Start/Finish at approximate location 40°54’25.8” N 073°24’28.8” N, East Turn at approximate location 40°54’45” N 073°23’36.6” N and a West Turn at approximate location 40°54’31.2” N 073°25’21” N. This action is intended to prohibit vessel traffic in this portion of Huntington Bay, NY to provide for the safety of swimmers, swimmer safety craft and the boating community from the hazards posed by vessels operating near persons participating in this open water swim.

The temporary special local regulation will only be enforced for approximately four hours and fifteen minutes on the day of the race. Marine traffic that may safely do so, may transit outside of the regulated area during the enforcement period, allowing navigation in all other portions of Huntington Bay, NY not covered by this rule. Entry into the designated area would be prohibited unless authorized by the Captain of the Port Long Island Sound or the designated on-scene patrol personnel. Notification of the race date and subsequent enforcement of the special local regulation will be made via marine broadcasts and broadcast notice to mariners. Any violation of the special local regulation described herein is punishable by, among others, civil and criminal penalties, *in rem* liability against the offending vessel, and license sanctions.

**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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This regulation may have some impact on the public, but the potential impact would be minimized for the following reason: vessels may transit in all areas of Huntington Bay, NY other than the area of the SLR with minimal increased transit time and the SLR will only be enforced for approximately four and a quarter hours on July 12th, 2009.

### 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in those portions of Huntington Bay, NY covered by the SLR. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

### 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 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.

### Taking of Private Property

This rule will 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 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 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 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. This rule involves a special local regulation issued in conjunction with a marine event. An environmental analysis checklist and a categorical exclusion determination will be available in the 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 temporary § 100.120 to read as follows:

**§ 100.120 Fran Schnarr Open Water Championships, Huntington Bay, New York.**

(a) *Regulated area.* All navigable waters of Huntington Bay, NY within 100 yards of the swim race course consisting of the following points: Start/Finish at approximate position 40°54'25.8" N 073°24'28.8" N, East Turn at approximate position 40°54'45" N 073°23'36.6" N and a West Turn at approximate position 40°54'31.2" N 073°25'21" N.

(b) *Definitions.* The following definition applies to this section:

*Designated on-scene patrol personnel* means any commissioned, warrant or petty officer of the U.S. Coast Guard operating Coast Guard vessels who has been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Special local regulations.* (1) The general regulations contained in 33 CFR § 100.35 and § 100.40 apply.

(2) In accordance with the general regulations in § 100.35 of this part, no person or vessel may enter, transit, or remain within the regulated area during the effective period of the regulation unless they are officially participating in the Fran Schnarr Open Water Swim event or are otherwise authorized by the Captain of the Port Long Island Sound or the designated on-scene patrol personnel.

(3) All persons and vessels must comply with the instructions from the Coast Guard Captain of the Port Long Island Sound or the designated on-scene patrol personnel. The designated on-scene patrol personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Persons and vessels desiring to enter the regulated area may request permission to enter from the designated on-scene patrol personnel on VHF-16 or from the Captain of the Port Long Island Sound via phone at (203) 468-4401.

(d) *Effective Period.* This rule is in effect from 7:15 a.m. to 11:30 a.m. on July 12th, 2009. Notification of the swim event and enforcement of the special local regulation will be made via separate marine broadcasts and broadcast notice to mariners.

Dated: June 19, 2009.

**Daniel A. Ronan,**

*Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.*

[FR Doc. E9-16307 Filed 7-9-09; 8:45 am]

BILLING CODE 4910-15-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2009-0546]

**Drawbridge Operation Regulations; Annisquam River and Blynman Canal, Gloucester, MA, Public Event**

**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 Blynman (SR127) Bridge across the Blynman Canal at mile 0.0, at Gloucester, Massachusetts. This deviation is necessary to facilitate the 2009 Gloucester Triathlon. The deviation allows the bridge to remain in the closed position during this public event in the interest of public safety.

**DATES:** This deviation is effective from 9 a.m. through 11 a.m. on August 9, 2009.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0546 and are available online at <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0546 in the docket ID box, pressing enter, and then clicking on the item in the Docket ID column. This material is 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. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223-8364, [john.w.mcdonald@uscg.mil](mailto:john.w.mcdonald@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** The Blynman (SR127) Bridge, across the Blynman Canal at mile 0.0, at Gloucester, has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.586.

The waterway supports both commercial and seasonal recreational vessel traffic.

Under this deviation the Blynman (SR127) Bridge may remain in the closed position from 9 a.m. through 11 a.m. on August 9, 2009, to facilitate a public event, the 2009 Gloucester Triathlon. Vessels that can pass under the closed draws may do so at any time.

This deviation is necessary for public safety, to facilitate vehicular traffic management during the 2009 Gloucester Triathlon.

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.

Dated: June 23, 2009.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. E9-16395 Filed 7-9-09; 8:45 am]

BILLING CODE 4910-15-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R06-OAR-2005-TX-0005; FRL-8928-6]

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the 1-Hour Ozone Plan for the Beaumont/Port Arthur Area: Control of Air Pollution From Volatile Organic Compounds, Nitrogen Compounds, and Reasonably Available Control Technology**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving part of two Beaumont-Port Arthur (BPA) State Implementation Plan (SIP) revisions that were submitted separately by the State of Texas on October 15, 2005. The revisions being approved pertain to volatile organic compound (VOC) control requirements for batch processing and ship building and ship repair, and also to Reasonably Available Control Technology (RACT) requirements, for the Beaumont/Port Arthur (BPA) 1-hour ozone serious nonattainment area. In today's action, EPA is approving: The State's changes to the batch process rules and the shipbuilding and ship repair rules that lower the threshold for affected sources of VOC emissions to the serious area requirements of 50 tons per year (tpy),