

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2009-0520]

RIN 1625-AA08

#### Special Local Regulation, Fran Schnarr Open Water Championships, Huntington Bay, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent Special Local Regulation within the waters of Huntington Bay, New York for the annual Fran Schnarr Open Water Championships. This proposed Special Local Regulation 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 held on a single day each July. 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:** Comments and related material must reach the Coast Guard on or before November 5, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0520 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and

5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed 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 or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

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

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

#### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0520), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2009-0520" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0520 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### **Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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

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. Last year, the Coast Guard established a temporary special local regulation to protect the swimmers and safety craft from the hazards imposed by passing water traffic and other water related activities (74 FR 33144 [USCG–2009–0520]).

To ensure the continued safety of the swimmers, safety craft and the boating public, the Coast Guard is proposing to establish a special local regulation around the race course for the duration of the race, generally from 7:15 a.m. to 11:30 a.m. on the day of the race.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish a special local regulation on the navigable waters of Huntington Bay, NY that would exclude all unauthorized persons and vessels from approaching within 100 yards of the proposed 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.

While the special local regulation will be permanent, it will only be enforced for approximately four hours and fifteen minutes on a single day in July that will be specified annually. Notification of the race date and subsequent enforcement of the special local regulation will be made via separate notice in the **Federal Register**, marine broadcasts and local notice to mariners. Entry into this area would be prohibited unless authorized by the Captain of the Port Long Island Sound or the designated on-scene patrol personnel. Marine traffic that may safely do so may transit outside of the area during the enforcement period, allowing navigation in all other portions of Huntington Bay, NY not covered by this rule. Any violation of the special local regulation

described herein is punishable by civil and criminal penalties, *in rem* liability against the offending vessel, and license sanctions.

#### Regulatory Analyses

We developed this proposed 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 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 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 special local regulation with minimal increased transit time and the special local regulation will only be enforced for approximately four and a quarter hours on a single specified day each July.

#### 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. This proposed 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 special local regulation. 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. 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.

#### 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. 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: MST1 Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *christie.m.dixon@uscg.mil*. 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.

#### 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 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a special local regulation which is categorically excluded from further environmental analysis under paragraph 34(h) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## 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 proposes to amend 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 § 100.123 to read as follows:

### § 100.123: 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 have 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 regulation unless they are officially participating in the Fran Schnarr Open Water Swim event or are otherwise authorized by 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 to the Captain of the Port, Long Island Sound via phone at (203) 468-4401.

(d) *Enforcement Period.* This rule is enforced from 7:15 a.m. to 11:30 a.m. on a specified day each July to be determined on an annual basis. Notification of the specific date for the swim race and enforcement of the special local regulation will be made via separate notice in the **Federal Register**, marine broadcasts and local notice to mariners.

Dated: June 17, 2009.

**Daniel A. Ronan,**

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

[FR Doc. E9-24007 Filed 10-5-09; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Parts 151, 155, and 160

[USCG-2008-1070]

RIN 1625-AB27

### Nontank Vessel Response Plans and Other Vessel Response Plan Requirements

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public meetings; request for comments; correction.

**SUMMARY:** The Coast Guard is issuing a correction to an earlier document that