

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: February 3, 2011.

**David M. Frank,**  
*Bridge Administrator.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0794]

RIN 1625-AA11

#### Regulated Navigation Area; Hudson River South of the Troy Locks, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of the Hudson River in New York, south of the Troy Locks. This action is necessary to promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce. This action will impose restrictions on vessels operating within the waters of the Hudson River south of the Troy Locks when ice is a threat to navigation.

**DATES:** This rule is effective in the CFR on February 15, 2011. This rule is effective with actual notice for purposes of enforcement on January 20, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2010-0794 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0794 in the "Keyword" box, and then clicking "Search." 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 Chief Warrant Officer Kary Moss, Coast Guard Sector New York Waterways Management Division; telephone 718-354-4117, e-mail

[Kary.L.Moss@uscg.mil](mailto:Kary.L.Moss@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

On December 10, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Hudson River South of the Troy Locks, NY" in the **Federal Register** (75 FR 76943). We received no comments on the proposed rule. A public meeting was not requested and none was held.

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**. The 30-day delay would be contrary to the public interest. As of January 20, 2011, ice formations in the Hudson River require the commencement of Coast Guard icebreaking operations. Without immediate implementation of this rule, the Coast Guard will not be able to prevent underpowered tugs from transiting through identified, unsafe ice conditions. This could lead to these tugs with barges becoming beset in the ice and further delaying the delivery of home heating oil to communities along the Hudson River and within the region, as well as posing a safety threat to the environment and a potential hazard to navigation.

##### Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1221-1236; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define RNAs.

Historically ice has been an impediment to navigation during certain times of the year on the navigable waters of the Hudson River south of the Troy Locks. West Point, Crum Elbow, Esopus Meadows, Stuyvesant Anchorage, Hudson Anchorage, Silver Point, and Hyde Park are all natural choke points on the Hudson River where ice buildup has the potential to severely restrict vessel traffic.

There are several situations faced by vessels during severe winter conditions that can place the vessels, passengers, and crew in great danger including being beset in the ice and ice accretion, where ice forms on the superstructure and decks of transiting vessels thereby affecting the vessel's stability. Ice may also cause significant damage to propellers, rudders, and hull plating.

The formation of ice on the Hudson River is subject to many variables and is not consistent from year to year. During a moderate or severe winter, the frozen waterways may impede a vessel's ability to maneuver. Once ice build-up begins it can affect the transit of vessels on the navigable waterways. In addition a vessel's watertight integrity may also be compromised by ice abrasion and ice pressure on the vessel's hull.

Ice floes on the navigable waterways may also cause visual aids to navigation to become submerged, destroyed, or moved off station. Ice conditions on the navigable waterways may create hazardous conditions in which the operations of certain vessels become unsafe.

Previous ice seasons have shown that vessels with less than 3000 horsepower, while engaged in towing operations, have significant difficulty transiting the Hudson River in locations where ice thickness is on average eight inches or greater. This difficulty in transiting the Hudson River during ice buildup poses a safety threat to the environment and a potential hazard to navigation.

It sometimes becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. During the 2009-2010 ice navigation season the Coast Guard promulgated a Temporary Final Rule that established an RNA for that period. That rule established restrictions similar to those that the Coast Guard establishes in this rule. This rule allows the Coast Guard to restrict and manage vessel movement when hazardous ice conditions exist within a specified area of the Hudson River.

##### Background

The Regulated Navigation Area is intended to restrict vessels with less than 3000 horsepower (HP) engaged in towing operations from operating on the Hudson River south of the Troy Locks when ice thickness is on average eight inches or greater, unless authorized by the Captain of the Port (COTP) New York or a designated representative.

The COTP New York will notify mariners of the location and thickness of the ice as well as any restrictions via marine broadcast, Local Notices to Mariners, and VTS New York. For the purpose of this rule, the definition of horsepower in 46 CFR 10.107 applies.

When the ice thickness reaches an average of eight inches or greater on the Hudson River along reported routes, vessels of less than 3,000 HP engaged in towing operations will not be authorized to transit unless in conjunction with scheduled Coast Guard icebreaking operations in the

area, or operating with an assist tug or as part of a convoy, or specifically authorized by the COTP New York.

Operators of vessels that do not meet the criteria of the operating restrictions, but who believe that they have the capability to operate in ice safely, may seek a waiver from the COTP New York to continue operating. Waivers may be requested by calling telephone number (718) 354-4356 or on VHF channel 13 or 16.

#### **Discussion of Comments and Changes**

The Coast Guard received no comments on the proposed rulemaking. No changes were made to the Final Rule.

#### **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's implementation of the Regulated Navigation Area will only be enforced at the location on the navigable waters of the Hudson River south of the Troy Locks where ice conditions on average are eight inches or greater, and only restrict vessels that are less than 3,000 horsepower while engaged in towing operations.

#### **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 may be small entities: The owners and operators of tugs with engines below 3,000 total horsepower attempting to transit the

Hudson River in cold weather months when ice thickness is on average eight inches or greater.

This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: Tugs with less than 3,000 total horsepower have historically been unable to transit the Hudson River when ice thickness is on average eight inches or greater. Operators have generally taken these vessels out of service or use vessels that are capable of operating in such conditions.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 an 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 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 that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing a Regulated Navigation Area restricting tugs with less than 3,000 total horsepower from transiting the Hudson River when ice thickness is on average eight inches or greater. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

### 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:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.165 to read as follows:

### § 165.165 Regulated Navigation Area; Hudson River South of the Troy Locks, NY.

(a) *Regulated navigation area.* All navigable waters of the Hudson River south of the Troy Locks.

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

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer, or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port (COTP) New York.

(2) *Horsepower (HP)* means the total maximum continuous shaft horsepower of all the vessel's main propulsion machinery.

(c) *Applicability.* This section applies to tugs with less than 3,000 horsepower when engaged in towing operations.

(d) *Regulations.* (1) Except as provided in paragraph (c)(3) of this section, vessels less than 3,000 horsepower while engaged in towing operations are not authorized to transit that portion of the Hudson River south of the Troy Locks when ice thickness on average is eight inches or greater.

(2) All Coast Guard assets enforcing this Regulated Navigation Area can be contacted on VHF marine band radio, channel 13 or 16. The COTP can be contacted at (718) 354-4356, and the public may contact the COTP to suggest changes or improvements in the terms of this Regulated Navigation Area.

(3) All persons desiring to transit through a portion of the regulated area that has operating restrictions in effect must contact the COTP at telephone number (718) 354-4356 or on VHF channel 13 or 16 to seek permission prior to transiting the affected regulated area.

(4) The COTP will notify the public of any changes in the status of this Regulated Navigation Area by Marine Safety Information Broadcast on VHF-FM marine band radio, channel 22A (157.1 MHz).

Dated: January 20, 2011.

**Daniel A. Neptun,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 2011-3351 Filed 2-14-11; 8:45 am]

**BILLING CODE 9110-04-P**

### DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG-2011-0010]

RIN 1625-AA00

### Safety Zone; Miami International Triathlon, Bayfront Park, Miami, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the waters east of Bayfront Park for the Miami International Triathlon in Miami, Florida. The triathlon is scheduled to take place on March 20, 2011. The temporary safety zone is necessary for the safety of triathlon participants, participant vessels, and the general public during the swim portion of the triathlon. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless specifically authorized by the Captain of the Port Miami or a designated representative.

**DATES:** This rule is effective from 7 a.m. until 9:30 a.m. on March 20, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0010 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0010 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 Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305-535-8724, e-mail [Paul.A.Steiner@uscg.mil](mailto:Paul.A.Steiner@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)