



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-0170]

RIN 1625-AA08

Special Local Regulation; Breakers to Bridge Paddle Festival, Lake Superior; Keweenaw Waterway, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation on Lake Superior within the Keweenaw Waterway for the annual Breakers to Bridge Paddle Festival. This annual event historically occurs within the first 2 weeks of September and lasts for 1 day. This action is necessary to safeguard the participants and spectators on the water in a portion of the Keweenaw Waterway between the North Entry and the Portage Lake Lift Bridge located in Houghton, MI. This regulation would functionally restrict all vessel speeds while within a designated no-wake zone, unless otherwise specifically authorized by the Captain of the Port (COTP) Duluth or a designated representative. The area forming the subject of this permanent special local regulation is described below. We invite your comments on this notice of proposed rulemaking (NPRM).

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2017-0170 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request

for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Junior Grade John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218-725-3818, e-mail John.V.Mack@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port, Duluth
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

This annual event will consist of a series of races and non-competitive events of varying lengths that utilize stand up paddleboards, kayaks, and canoes that take place entirely within the Keweenaw Waterway between the North Entry and the Portage Lake Lift Bridge located in Houghton, MI. Due to the race course spanning a significant portion of the Keweenaw Waterway it is anticipated that a significant number of recreational and commercial vessels attempting to transit near the paddle craft would pose a significant safety hazard to event participants and safety observers.

The Captain of the Port, Duluth, believes a special local regulation for the Keweenaw Waterway restricting the speed of vessels through the use of a no-wake zone before, during, and after the scheduled event is needed to safeguard persons and vessels during the races. The statutory basis for this rulemaking is 33 U.S.C. 1233, which give the Coast Guard, under a delegation from the Department of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act.

III. Discussion of Proposed Rule

This proposed rule would create a permanent special local regulation in the Keweenaw Waterway for the annual Breakers to Bridge Paddle Festival that historically takes place in the within the first two weeks of September. The no-wake zone would be enforced on all vessels entering a portion of the Keweenaw Waterway beginning at the North Entry at position 47°14'03" N., 088°37'53" W.; and ending at the Portage Lake Lift Bridge at position 47°07'25" N., 088°34'26" W. All vessels transiting through the no-wake zone would be required to travel at an appropriate rate of speed that does not create a wake except as may be permitted by the COTP or a designated representative. The precise times and date of enforcement for this special local regulation would be determined annually.

The Captain of the Port, Duluth, will use all appropriate means to notify the public when the special local regulation in this proposed rule will be enforced. Such means may include publication in the Federal Register a Notice of Enforcement, Broadcast Notice to Mariners, and Local Notice to Mariners. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it .

As this proposed rule is not a significant regulatory action, this rulemaking is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-year of the Special Local Regulation. Vessel traffic will be able to safely transit through the no-wake zone which will impact only a portion of the Keweenaw Waterway between the North Entry and the Portage Lake Lift Bridge located in Houghton, MI during a time of year when commercial vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 rulemaking will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit through the no-wake zone may be small entities, for the reasons stated in section V.A above, this proposed rule will not have a significant economic impact on any vessel owner or operator.

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 rulemaking would economically affect it.

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. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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.

C. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the

fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. 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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. 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 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a no-wake zone being enforced for no more than 5 hours along a prescribed route between Washburn & Ashland, Wisconsin. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental

analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments,

will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 § 100.0170 to read as follows:

§ 100.0170 Special Local Regulation; Breakers to Bridge Paddle Festival, Lake Superior; Keweenaw Waterway, MI.

(a) Location. All waters of the Keweenaw Waterway beginning at the North Entry at position 47°14'03" N., 088°37'53" W.; and ending at the Portage Lake Lift Bridge at position 47°07'25" N., 088°34'26" W.

(b) Effective period. This annual event historically occurs within the first or second week of September. The Captain of the Port Duluth, will establish enforcement dates that will be announced by Notice of Enforcement, Local Notice to Mariners, Broadcast Notice to Mariners, on-scene designated representatives, or other means of outreach.

(c) Regulations. Vessels transiting within the regulated area shall travel at a no-wake speed except as may be permitted by the Captain of the Port Duluth or a designated on-scene representative.

Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

(d) Penalties. Vessels or persons violating this rule may be subject to the penalties set forth in 33 U.S.C. 1233.

Dated: March 23, 2017.

E. E. Williams,

Commander, U.S. Coast Guard,

Captain of the Port Duluth.

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