



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-1086]

RIN 1625-AA08

Special Local Regulation; Chesapeake Bay, Between Sandy Point and Kent Island, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on the navigable waters located between Sandy Point, Anne Arundel County, MD and Kent Island, Queen Anne's County, MD, during a paddling event on April 29, 2017. This rulemaking will prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander.

DATES: This rule is effective from 7 a.m. on April 29, 2017 through 1 p.m. on April 30, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-1086 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region, MD; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On December 13, 2016, ABC Events, Inc. of Arnold, MD notified the Coast Guard that it will be conducting the Bay Bridge Paddle from 7:30 a.m. to 12:30 p.m. on April 29, 2017. The event will be located adjacent to Sandy Point State Park at Annapolis, MD, and under and between the north and south bridges that comprise the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point, Anne Arundel County, MD and Kent Island, Queen Anne's County, MD. On February 14, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulation; Chesapeake Bay, Between Sandy Point and Kent Island, MD” in the Federal Register (82 FR 10555). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this paddle race. During the comment period that ended March 16, 2017, we received 2 comments. No public meeting was 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, because allowing a 30-day period with respect to this rule would be impracticable due to the date of the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The COTP

Maryland-National Capital Region has determined that potential hazards associated with the paddle race on April 29, 2017 will be a safety concern for anyone intending to operate within certain waters of the Chesapeake Bay between Sandy Point and Kent Island, MD. The purpose of this rule is to protect event participants, spectators and transiting vessels on certain waters of the Chesapeake Bay before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 2 comments on the NPRM published on February 14, 2017. There are no changes in the regulatory text of this rule from the text previously proposed in the NPRM.

Comments were received from the Baltimore Port Alliance Executive Steering Committee, they stated that the proposed regulated area for this event would block commercial vessel access to and from the Port of Baltimore for five hours, and that any restrictions on vessel traffic in or out of the port could result in a significant economic hardship for port stakeholders by disrupting committed ship schedules. Additionally, the committee recommended re-routing the paddle race course in a manner that would not block the main shipping channel or to change the date of the paddle race to coincide with the annual Great Chesapeake Bay Swim event a month later, so that only one blockage of the main shipping channel would occur.

The Coast Guard agrees that waterway restrictions, when necessary, should be as limited in scope and duration. For this event, sufficient notice has been provided for persons to schedule, coordinate and adjust their ship schedules. The Coast Guard will work with the port stakeholders to carefully monitor potential impacts to commercial vessel movements in the vicinity of the marine event area. It is impractical to conduct the events concurrently; as the two marine events are significantly different. The safety of paddlecraft participants and swimmers

both numbering in the hundreds would be negatively impacted by occupying the same navigable waters. The event schedule for the Great Chesapeake Bay Swim is dependent upon tidal current predictions; the possibility exists, should both events be conducted on the same day, waterway restrictions would last for a significantly longer period of time having a greater impact on waterway users.

Comments were received from an amateur paddler, supporting the manner the proposed regulation for this event would be enforced. The paddler indicated the regulation showed prudent judgment and was carefully considered by the Coast Guard, would enhance safety to event participants while minimizing restrictions on mariners and would allow continued recreational access to the Chesapeake Bay by the public.

The Coast Guard strives to ensure equitable use of federal waterways like the Chesapeake Bay. During this event the Coast Guard will only enforce the regulated area during the enforcement period.

This rule establishes special local regulations from 7 a.m. to 1 p.m. on April 29, 2017, and, if necessary due to inclement weather, from 7 a.m. to 1 p.m. on April 30, 2017. The regulated area will include all navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01'05.23" N., longitude 076°23'47.93" W.; thence eastward to latitude 39°01'02.08" N., longitude 076°22'58.38" W.; thence southward to latitude 38°59'57.02" N., longitude 076°23'02.79" W.; thence eastward and parallel and 500 yards north of the north bridge span to eastern shoreline at latitude 38°59'13.70" N., longitude 076°19'58.40" W.; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that

originates from the western shoreline at latitude 39°00'17.08" N., longitude 076°24'28.36" W.; thence southward to latitude 38°59'38.36" N., longitude 076°23'59.67" W.; thence eastward to latitude 38°59'26.93" N., longitude 076°23'25.53" W.; thence eastward to the eastern shoreline at latitude 38°58'40.32" N., longitude 076°20'10.45" W, located between Sandy Point and Kent Island, MD. The duration of the regulated area is intended to ensure the safety of vessels and these navigable waters before, during, and after the event, currently scheduled to being at 7:30 a.m. and last until 12:30 p.m. Except for Bay Bridge Paddle participants, no vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or designated Coast Guard Patrol Commander.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, 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 rule is not a significant regulatory action, this rule 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 and duration of the regulated area, which would impact a small designated area of the Chesapeake Bay for 6 hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the COTP or designated Coast Guard Patrol Commander deems it safe to do so.

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 rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. 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 person listed in the FOR FURTHER INFORMATION CONTACT section.

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.

C. Collection of Information

This 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 E.O. 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 rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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. If you believe this 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. 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 (42 U.S.C. 4321-4370f), and have determined 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 rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on

the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 6 hours. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2-1 of Commandant Instruction M16475.ID. An environmental analysis checklist supporting this determination and a 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 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.

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 § 100.501T05-1086 to read as follows:

§ 100.501T05-1086 Special Local Regulation; Chesapeake Bay, between Sandy Point and Kent Island, MD.

(a) Regulated area. The following location is a regulated area: All navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01'05.23" N., longitude 076°23'47.93" W.; thence eastward to latitude 39°01'02.08" N., longitude 076°22'58.38" W.; thence southward to latitude 38°59'57.02" N., longitude 076°23'02.79" W.; thence eastward and parallel and 500 yards north of the north bridge span to eastern shoreline at latitude 38°59'13.70" N., longitude 076°19'58.40" W.; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00'17.08" N., longitude 076°24'28.36" W.; thence southward to latitude 38°59'38.36" N., longitude 076°23'59.67" W.; thence eastward to latitude 38°59'26.93" N., longitude 076°23'25.53" W.; thence eastward to the eastern shoreline at latitude 38°58'40.32" N., longitude 076°20'10.45" W, located between Sandy Point and Kent Island, MD. All coordinates reference Datum NAD 1983.

(b) Definitions. (1) Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) Participant means all persons and vessels participating in the Bay Bridge Paddle event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Maryland-National Capital Region.

(c) Special local regulations. (1) The COTP or Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(2) Except for participants and vessels already at berth, all persons and vessels within the regulated area at the time it is implemented are to depart the regulated area.

(3) Persons and vessels desiring to transit, moor, or anchor within the regulated area must first obtain authorization from the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. Prior to the enforcement period, to seek permission to transit, moor, or anchor within the area, the Captain of the Port Maryland-National Capital Region can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). During the enforcement period, to seek permission to transit, moor, or anchor within the area, the Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) for direction.

(4) The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies. The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(d) Enforcement period. This section will be enforced from 7 a.m. to 1 p.m. on April 29, 2017, and, if necessary due to inclement weather, from 7 a.m. to 1 p.m. on April 30, 2017.

Dated: April 7, 2017.

Lonnie P. Harrison, Jr.,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.

[FR Doc. 2017-07376 Filed: 4/11/2017 8:45 am; Publication Date: 4/12/2017]