



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-0077]

RIN 1625-AA08

Special Local Regulation; Tred Avon River, between Bellevue, MD and Oxford, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the Tred Avon River. This action is necessary to provide for the safety of life on the navigable waters located between Bellevue, MD and Oxford, MD, during a swim event on June 10, 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 the Coast Guard Patrol Commander.

DATES: This rule is effective from 8:30 a.m. on June 10, 2017, until 11:30 a.m. on June 11, 2017. This rule will be enforced from 8:30 a.m. until 11:30 a.m. on June 10, 2017, and if necessary, due to inclement weather, from 8:30 a.m. until 11:30 a.m. on June 11, 2017

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0077 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

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|--------|---------------------------------|
| 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 January 23, 2017, Charcot-Marie-Tooth Association of Trappe, MD notified the Coast Guard that it will be conducting the swim portion of the Oxford Biathlon from 9:30 a.m. until 10:30 a.m. on June 10, 2017. The event will be conducted on a designated 1300-meter course that starts at the ferry dock at Bellevue, MD and finishes at the Tred Avon Yacht Club at Oxford, MD. On February 27, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulation; Tred Avon River, between Bellevue, MD and Oxford, MD” in the Federal Register (82 FR 11867). In the NPRM, we stated the purpose of the rulemaking and invited comments on the proposed regulatory action related to this swim event. During the comment period that ended March 29, 2017, we received 1 comment. No public meeting was requested, and none was held.

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 swim event on June 10, 2017, will be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of the Tred Avon River between Belvue, MD and Oxford, MD. The purpose of this rule is to protect event participants, spectators and transiting vessels on certain waters of the Tred Avon River before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 1 comment on our NPRM published on February 27, 2017. There are no changes in the regulatory text of this rule from what was proposed in the NPRM.

The commenter, an individual, stated support for the regulated area, that it's necessary because the concentration of swimmers in this case increases the likelihood of a boating accident. Additionally, the consequences would be a slight inconvenience for a small number of recreational boaters and nothing involving significant economic trade on the waterway.

The Coast Guard agrees that this waterway restriction is necessary, however, should remain limited in scope and duration. The Coast Guard carefully considered its actions to enhance safety to event participants while minimizing restrictions on mariners on the Tred Avon River. For this event, enough notice has been provided for persons to schedule, coordinate and adjust their voyages, and the Coast Guard will only enforce the regulated area during the enforcement period.

This rule establishes special local regulations from 8:30 a.m. until 11:30 a.m. on June 10, 2017, and if necessary, due to inclement weather, from 8:30 a.m. until 11:30 a.m. on June 11, 2017. The regulated area will include all navigable waters of the Tred Avon River, from

shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42'25" N, longitude 076°10'45" W, thence south to latitude 38°41'37" N, longitude 076°10'26" W, and bounded on the west by a line drawn from latitude 38°41'58" N, longitude 076°11'04" W, thence south to latitude 38°41'25" N, longitude 076°10'49" W, thence east to latitude 38°41'25" N, longitude 076°10'30" W, located at Oxford, MD. The duration of the regulated area is intended to ensure the safety of event participants and vessels within the specified navigable waters before, during, and after the event, currently scheduled to begin at 9:30 a.m. and last until 10:30 a.m. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or the designated Coast Guard Patrol Commander, except for Oxford Biathlon participants.

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 Tred Avon River for three 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 vessel operators to request permission to enter the regulated area for the purpose of safely transit the regulated area if deemed safe to do so by the COTP or designated Coast Guard Patrol Commander.

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 V.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 may negatively impact the safety of waterway users and shore side activities within the event area. This category of marine event 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 § 100.501T05-0077 to read as follows:

§ 100.501T05-0077 Special Local Regulation; Tred Avon River, between Bellevue, MD and Oxford, MD.

(a) 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 Oxford Biathlon 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.

(b) Regulated area. The following location is a regulated area: All navigable waters of the Tred Avon River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42'25" N, longitude 076°10'45" W, thence south to latitude 38°41'37" N, longitude 076°10'26" W, and bounded on the west by a line drawn from latitude 38°41'58" N, longitude 076°11'04" W, thence south to latitude 38°41'25" N, longitude 076°10'49" W, thence east to latitude 38°41'25" N, longitude 076°10'30" W, located at Oxford, MD. All coordinates reference Datum NAD 1983.

(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 shall depart the regulated area.

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

(4) The Coast Guard may be assisted with marine event 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 8:30 a.m. until 11:30 a.m. on June 10, 2017, and if necessary, due to inclement weather, from 8:30 a.m. until 11:30 a.m. on June 11, 2017.

Dated: April 13, 2017.

Michael W. Batchelder,
Commander, U.S. Coast Guard,
Acting Captain of the Port Maryland-National Capital Region.

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