



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-0067]

RIN 1625-AA08

Special Local Regulation; Bush River, Harford County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the Bush River, including Otter Point Creek. This action is necessary to provide for the safety of life on these navigable waters located near Flying Point Park in Harford County, MD, during a high-speed power boat racing event on May 6, 2017, and May 7, 2017. This rulemaking would prohibit persons and vessels from being in 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 11 a.m. on May 6, 2017, until 7 p.m. on May 7, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0067 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, Waterways Management Division, Sector Maryland-National Capital Region, U.S. Coast Guard; 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

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. Details of the proposed event were provided to the Coast Guard on March 30, 2017. At this time, it would be impracticable to complete the full notice and comment process because this special local regulation must be established on May 6, 2017, and May 7, 2017.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Due to the date of the event, it would be impracticable to make the regulation effective 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

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

the Coast Guard to establish and define special local regulations. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the power boat race would be a safety concern for anyone intending to operate within certain waters of the Bush River and Otter Point Creek in Harford County, MD. The purpose of this rulemaking is to protect event participants and transiting vessels on certain waters of the Bush River and Otter Point Creek before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 11 a.m. until 7 p.m. on May 6, 2017, and from 11 a.m. until 7 p.m. on May 7, 2017. The regulated area would cover all navigable waters of the Bush River, including Otter Point Creek, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°27'15" N., longitude 076°14'39" W. and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N., longitude 076°13'57" W.; and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. This rule provides additional information about areas within the regulated area, their definitions, and the restrictions that apply to mariners. The regulated areas include a "Race Area" and a "Buffer Zone".

The enforcement and duration of the regulated area is intended to ensure the safety of vessels and the specified navigable waters before, during, and after the noon to 6 p.m. high-speed power boat races. Except for Flying Point Park Outboard Regatta participants, no vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or Coast Guard Patrol Commander. The regulatory text we are proposing appears at the end of this document.

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. Executive Order 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, 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 Bush River and Otter Point Creek for a 16 hour enforcement period. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to request permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the 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 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 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 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 above.

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 a total of 16 hours. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble.

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 § 100.501-T05-0067 to read as follows:

§ 100.501-T05-0067 Special Local Regulation; Bush River, Harford County, 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 their 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 Flying Point Park Outboard Regatta 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.

(5) Race Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section. Only event sponsor designated participants or designated participating vessels and official patrol vessels are allowed to enter the race area. Persons or vessel operators may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Patrol Commander on VHF-FM Channel 16.

(6) Buffer Zone is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer zone is to minimize potential collision conflicts with marine event participants or race boats and nearby transiting vessels. This area provides separation between a Race Area and other vessels that may be operating in the vicinity of the regulated area established by the special local regulations.

(b) Locations. The following locations are within the regulated area:

(1) Regulated area. All navigable waters of the Bush River, including Otter Point Creek, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°27'15" N., longitude 076°14'39" W. and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N., longitude 076°13'57" W.; and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. All coordinates reference Datum NAD 1983.

(2) Race Area. The race area is a polygon in shape measuring approximately 540 yards in length by 270 yards in width. The area is bounded by a line commencing at position latitude

39°26'33.1" N., longitude 076°15'46.8" W.; thence westerly to latitude 39°26'33.1" N., longitude 076°15'49.3" W.; thence northerly to latitude 39°26'37.1" N., longitude 076°15'52.4" W.; thence northeasterly to latitude 39°26'40.0" N., longitude 076°15'52.5" W.; thence easterly to latitude 39°26'45.9" N., longitude 076°15'32.2" W.; thence southeasterly to latitude 39°26'45.3" N., longitude 076°15'30.0" W.; thence southerly to latitude 39°26'43.8" N., longitude 076°15'29.1" W.; thence southerly to latitude 39°26'42.2" N., longitude 076°15'28.9" W.; thence southwesterly to latitude 39°26'40.8" N., longitude 076°15'29.3" W.; thence westerly terminating at point of origin.

(3) Buffer Zone. The area surrounds the entire race area described in the preceding paragraph of this section. This area is a polygon in shape and provides a buffer around the perimeter of the race area. The area is bounded by a line commencing at the shoreline at Flying Point Park at position latitude 39°26'31.9" N., longitude 076°15'32.5" W.; thence westerly to latitude 39°26'30.5" N., longitude 076°15'52.7" W.; thence northerly to latitude 39°26'39.9" N., longitude 076°16'00.0" W.; thence easterly to latitude 39°26'51.6" N., longitude 076°15'26.7" W.; thence southerly to latitude 39°26'37.0" N., longitude 076°15'22.5" W.; thence southerly to latitude 39°26'33.7" N., longitude 076°15'22.8" W., located at the shoreline at Flying Point Park.

(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 obtain authorization from the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. Prior to the enforcement periods, persons may request permission to transit, moor, or anchor within the regulated area, from 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 periods, to request 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 periods. This section will be enforced from 11 a.m. until 7 p.m. on May 6, 2017, and from 11 a.m. until 7 p.m. on May 7, 2017.

Dated: April 19, 2017

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

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