



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-0167]

RIN 1625-AA08

Special Local Regulation, Stuart, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Indian River located northeast of Ernest F. Lyons Bridge and south of Joes Cove, in Stuart, Florida during the Stuart Sailfish Regatta, a series of high-speed boat races. This special local regulation is necessary for the safety of race participants, participant vessels, spectators, and the general public during the event. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the regulated area while high-speed boats are operating.

DATES: This rule will be effective from 9 a.m. on May 19 through 6 p.m. on May 21, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0167 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 Petty Officer Mara Brown, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email Mara.J.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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 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 insufficient time remains to publish a NPRM and to receive public comments, as the Stuart Sailfish Regatta event will occur before the rulemaking process would be completed. For those reasons, it would be impracticable to publish a NPRM.

Under 5 U.S.C. 553(d)(3), for the reasons cited above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1233. The Captain of the Port Miami (COTP) has determined that potential hazards associated with the regatta will pose a risk to anyone in the established race and buffer zone. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the regulated area

while high-speed boats are operating.

IV. Discussion of the Rule

From May 19 through May 21, 2017, Stuart Sailfish Regatta, Inc. is hosting the Stuart Sailfish Regatta, a series of high-speed boat races. The races will be held on the Indian River located northeast of Ernest F. Lyons Bridge and south of Joes Cove, in Stuart, Florida. Approximately 150 high-speed power boats are participating in the event. It is anticipated that at least 100 spectator vessels will be present during the event.

This rule establishes a special local regulation that encompasses certain navigable waters of the Indian River located northeast of Ernest F. Lyons Bridge and south of Joes Cove, in Stuart, Florida. The special local regulation consists of the following four areas: (1) a race area, where all persons and vessels, except those participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone or authorized participants or vessels transiting to the race area, are prohibited from entering, transiting through, anchoring in, or remaining within; (3) spectator area one, north of the race area where all persons are prohibited from entering the water or swimming in the designated area; and (4) spectator area two, west of the race area, where all persons are prohibited from entering the water or swimming in the designated area.

Persons and vessels may request authorization to enter the regulated area by contacting the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the

instructions of the Captain of the Port Miami or a designated representative.

V. Regulatory Analyses

We developed this 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. 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, location, duration, and time-of-year of the special local regulation. Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative. Non-participant persons and vessels not able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Miami or a designated representative may operate in the surrounding areas during the respective enforcement periods. The Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 19, 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 Executive Order 13132.

Also, 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. 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 a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. 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

Harbors, 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 § 100.35T07-0167 to read as follows:

§ 100.35T07-0167 Special Local Regulation; Stuart Sailfish Regatta, Indian River, Stuart, FL.

(a) Location. The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) Race area. All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within the following points: starting at Point 1 in position 27°12'47"N, 080°11'10"W; thence south to Point 2 in position 27°12'42"N, 080°11'08"W; thence southwest to Point 3 in position 27°12'37"N, 080°11'12"W; thence southwest to Point 4 in position 27°12'34"N, 080°11'18"W; thence southwest to Point 5 in position 27°12'32"N, 080°11'23"W; thence west to Point 6 in position 27°12'32"N, 080°11'27"W; thence northwest to Point 7 in position 27°12'34"N, 080°11'31"W; thence northwest to Point 8 in position 27°12'39"N, 080°11'33"W; thence northeast to Point 9 in position 27°12'43"N,

080°11'31"W; thence northeast to Point 10 in position 27°12'47"N, 080°11'26"W; thence northeast to Point 11 in position 27°12'49"N, 080°11'21"W; thence east to Point 12 in position 27°12'50"N, 080°11'16"W; thence southeast back to origin. All persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) Buffer zone. All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within the following points: starting at Point 1 in position 27°12'41"N, 080°11'39"W; thence northeast to Point 2 in position 27°12'54"N, 080°11'22"W; thence northwest to Point 3 in position 27°12'55"N, 080°11'23"W; thence northeast to Point 4 in position 27°13'05"N, 080°11'01"W; thence southwest to Point 5 in position 27°12'47"N, 080°11'04"W; thence southeast to Point 6 in position 27°12'35"N, 080°11'00"W; thence southwest to Point 7 in position 27°12'22"N, 080°11'28"W; thence northwest back to origin. All persons and vessels, except those persons and vessels enforcing the buffer zone or authorized participants or vessels transiting to the race area, are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(3) Spectator area one. All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within the following points: starting at Point 1 in position 27°12'48"N, 080°11'42"W; thence northeast to Point 2 in position 27°12'59"N, 080°11'26"W; thence southeast to Point 3 in position 27°12'54"N, 080°11'22"W; thence southwest to Point 4 in position 27°12'43"N, 080°11'38"W; thence northwest back to origin. All persons are prohibited from entering the water or swimming in the spectator area.

(4) Spectator area two. All waters of Indian River located north of Ernest Lyons Bridge and west of the Intracoastal Waterway encompassed within the following points: starting at Point

1 in position 27°12'54"N, 080°11'56"W; thence northeast to Point 2 in position 27°12'56"N, 080°11'51"W; thence southeast to Point 3 in position 27°12'25"N, 080°11'33"W; thence southwest to Point 4 in position 27°12'23"N, 080°11'37"W; thence northwest back to origin. All persons are prohibited from entering the water or swimming in the spectator area.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) Regulations. (1) Non-participant persons and vessels are prohibited from entering the race area and buffer zone. Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners and/or on-scene designated representatives.

(d) Enforcement period. This rule will be daily from 9 a.m. to 6 p.m. on May 19 through May 21, 2017.

Dated: May 3, 2017.

M. M. Dean,
Captain, U.S. Coast Guard,
Captain of the Port Miami.

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