



9110-04-P

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: Final rule.

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**SUMMARY:** The Coast Guard is establishing 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 will functionally restrict all vessel speeds while within a designated no-wake zone, unless otherwise specifically authorized by the Captain of the Port Duluth (COTP) or a designated representative. The area forming the subject of this permanent special local regulation is described below.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0170 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 about this rulemaking, call or email Lieutenant John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218-725-3818, e-mail [John.V.Mack@uscg.mil](mailto: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	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On March 30, 2017 the Coast Guard published an NPRM in the Federal Register (82 FR 15662) entitled “Special Local Regulation; Breakers to Bridge Paddle Festival, Lake Superior, Keweenaw Waterway, MI.” The NPRM proposed to establish a no-wake zone within the Keweenaw Waterway on an annual basis during the Breakers to Bridge Paddle Festival, and invited comments on our proposed regulatory action related to this fireworks display. The aforementioned NPRM was open for comment for 30 days, in which no comments were received.

**III. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published on March 30, 2017. There are no changes in the regulatory text of this rule from the proposed rule in

the NPRM.

This rule creates 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 will 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 will be required to travel at an appropriate rate of speed that does not create a wake except as may be permitted by the Captain of the Port Duluth (COTP) or a designated representative. The precise times and date of enforcement for this special local regulation will be determined annually.

The COTP will use all appropriate means to notify the public when the special local regulation in this 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 regulatory text appears at the end of this document.

#### **IV. 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. 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, 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 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 through the no-wake zone 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.

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 rule would economically affect it.

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. 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 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 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 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 rule involves a no-wake zone being enforced for no more than 6 hours along a prescribed route between the North Entry & Portage Lake Lift Bridge within the Keweenaw Waterway in Michigan. 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.

#### 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 § 100.170 to read as follows:

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

(a) Location. All navigable 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 (COTP) will announce enforcement dates via 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 COTP 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.

Dated: June 8, 2017.

E. E. Williams,  
Commander, U.S. Coast Guard,  
Captain of the Port Duluth.

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