



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2018-0088]**

**RIN 1625-AA08**

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish 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 9, 2018. If necessary, due to inclement weather, the event will be rescheduled to June 10, 2018. This proposed rulemaking would 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. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0088 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; 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
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

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

On June 13, 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 9:15 a.m. until 10:15 a.m. on June 9, 2018, and if necessary, due to inclement weather, from 9:15 a.m. until 10:15 a.m. on June 10, 2018. The swim consists of approximately 30 participants competing 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. Hazards from the swim competition include participants swimming within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as swimming within approaches to public and private marinas and public boat facilities. The COTP Maryland-National Capital Region has determined that

potential hazards associated with the swim would 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 Bellevue, MD, and Oxford, MD.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on specified waters of the Tred Avon River before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations.

### **III. Discussion of Proposed Rule**

The COTP Maryland-National Capital Region proposes to establish special local regulations from 8:30 a.m. until 11 a.m. on June 9, 2018, and if necessary, due to inclement weather, from 8:30 a.m. until 11 a.m. on June 10, 2018. The regulated area would 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 scheduled 9:15 a.m. to 10:15 a.m. swim. Except for Oxford Biathlon participants, no vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or the Coast Guard Patrol Commander. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed 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**

Executive Orders 12866 and 13563 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

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 2-1/2 hours. 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 vessel operators to request permission to enter the regulated area for the purpose of safely transiting the regulated area if deemed safe to do so by the 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 proposed rule would 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 proposed rule would 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 proposed 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 proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would 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 proposed 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 proposed 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed 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 proposed 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 2-1/2 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 L[61] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is 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 proposed 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.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include

the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **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 proposes to amend 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 § 100.501T05-0088 to read as follows:

§ 100.501T05-0088 Special Local Regulation, Tred Avon River, between Bellevue, MD and Oxford, MD.

(a) Definitions. As used in this section:

(1) Captain of the Port (COTP) 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 COTP 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 as such 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) Location. 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 the COTP 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 COTP 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). 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).

(4) 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.

(d) Enforcement officials. The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 8:30 a.m. until 11 a.m. on June 9, 2018, and if necessary, due to inclement weather, from 8:30 a.m. until 11 a.m. on June 10, 2018.

Dated: March 29, 2018

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

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