



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2018-0178]**

**RIN 1625-AA08**

**Special Local Regulation; Choptank River, Cambridge, 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 Choptank River. This action is necessary to provide for the safety of life on the navigable waters located in Cambridge, MD, during a power boat racing event on July 28, 2018, and July 29, 2018. This proposed rule 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-2018-0178 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
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

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

On February 18, 2018, Kent Narrows Racing Association of Chester, MD, notified the Coast Guard that it will be conducting power boat races from 9 a.m. until 6 p.m. on July 28, 2018, and July 29, 2018. The high-speed power boat racing event consists of approximately 60 participants competing on a designated one-mile oval course in the Choptank River in a cove located between Hambrooks Bar and the shoreline at Cambridge, MD. Hazards from the power boat races include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. Details of the proposed event were provided to the Coast Guard at a meeting on April 10, 2018. There it was learned that during past power boat racing events in the area, large wakes created from transient vessels operating on the Choptank River west of the Senator Frederick C.

Malkus, Jr. (US-50) Memorial Bridge have caused great concern for event planners. Such wakes are hazardous to participants as their presence in the race area would result in injury or death due to vessel capsizing or collisions among participant vessels during the high-speed races. Allowing the proposed power boat racing event to proceed without including these navigable waters within the regulated area would adversely affect event participants. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of the Choptank River at Cambridge, MD.

The purpose of this rulemaking is to protect marine event participants, spectators and transiting vessels on specified waters of the Choptank River before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorizes 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 to be enforced from 8:30 a.m. until 6:30 p.m. on July 28, 2018 and July 29, 2018. This special local regulation would include navigable waters of the Choptank River located between the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge, at mile 15.5, and Hambrooks Bar Light. The area of the regulated area is approximately 3,000 yards in length and 3,000 yards in width.

The regulated area would include all navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: commencing at

the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34'30" N., longitude 076°04'16" W.; thence east to latitude 38°34'20" N., longitude 076°03'46" W.; thence north across the Choptank River along the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge, at mile 15.5, to latitude 38°35'30" N., longitude 076°02'52" W.; thence west along the shoreline to latitude 38°35'38" N., longitude 076°03'09" W.; thence north and west along the shoreline to latitude 38°36'42" N., longitude 076°04'15" W.; thence southwest across the Choptank River to latitude 38°35'31" N., longitude 076°04'57" W. terminating at the Hambrooks Bay breakwall. This rule provides additional information about designated areas within the regulated area, including a "Race Area," "Spectator Area" and "Buffer Zone," and the restrictions that apply to mariners. 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 power boat races, scheduled to occur 9 a.m. through 6 p.m. each day. Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from COTP Maryland-National Capital Region or Coast Guard Patrol Commander. When authorized to transit the regulated area, all vessels would proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. 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, location and duration of the regulated area. Vessel traffic would be able to safely transit through the regulated area, which would impact a small designated area of the Choptank River for 20 hours. The Coast Guard would issue a Broadcast Notice to Mariners via marine band radio VHF-FM channel 16 about the status of the regulated area. Moreover, the rule would, when deemed safe to do so by the Coast Guard Patrol Commander, allow vessel operators to request permission to enter, remain within, or transit through the regulated area for the purpose of either safely entering the "Spectator Area" or transiting the regulated area at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

### 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 (Pub. L. 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 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 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 a special local regulation lasting for 20 hours. 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 L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Memorandum for Record 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, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

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; 33 CFR 1.05-1.

2. Add § 100.35-T05-0178 to read as follows:

**§ 100.35-T05-0178 Special Local Regulation; Choptank River, Cambridge, 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 a 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) Spectator means any person or vessel not registered with the event sponsor as a participant or an official patrol vessel.

(5) Participant means any person or vessel participating in the Thunder on the Choptank 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. All coordinates reference Datum NAD 1983.

(1) Coordinates. The following location is a regulated area: All navigable waters within the Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34'30" N., longitude 076°04'16" W.; thence east to latitude 38°34'20" N., longitude 076°03'46" W.; thence north across the Choptank River along the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge, at mile 15.5, to latitude

38°35'30" N., longitude 076°02'52" W.; thence west along the shoreline to latitude 38°35'38" N., longitude 076°03'09" W.; thence north and west along the shoreline to latitude 38°36'42" N., longitude 076°04'15" W.; thence southwest across the Choptank River to latitude 38°35'31" N., longitude 076°04'57" W. terminating at the Hambrooks Bay breakwall.

(2) Race area. Located within the waters of Hambrooks Bay and Choptank River, between Hambrooks Bar and Great Marsh Point, MD.

(3) Buffer zone. All waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bound to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35'27.6" N., longitude 076°04'50.1" W., thence southeast to latitude 38°35'17.7" N. longitude 076°04'29" W., thence south to latitude 38°35'01" N. longitude 076°04'29" W., thence west to the shoreline at latitude 38°35'01" N., longitude 076°04'41.3" W.

(4) Spectator area. All waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, bounded by line that commences at latitude 38°35'27.6" N., longitude 076°04'50.1" W., thence northeast to latitude 38°35'30" N., longitude 076°04'47" W., thence southeast to latitude 38°35'23" N. longitude 076°04'29" W., thence southwest to latitude 38°35'19" N. longitude 076°04'31" W, thence northwest to and terminating at the point of origin.

(c) Special local regulations. (1) The Captain of the Port Maryland-National Capital Region or the 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.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant, at any time it is deemed necessary for the protection of life or property.

(4) The Race Area is an area within the regulated area defined in paragraph (b)(2) of this section. The actual placement of the race course will be determined by the marine event sponsor but must be located within the designated boundaries of the Race Area. Only participants and official patrol vessels are allowed to enter the Race Area.

(5) The Buffer Zone is an area that surrounds the perimeter of the Race Area within the regulated area defined in paragraph (b)(3) of this section. The purpose of a Buffer Zone is to minimize potential collision conflicts with participants and spectators or nearby transiting vessels. This area provides separation between the Race Area and Spectator Area or other vessels that are operating in the vicinity of the regulated area

defined in paragraph (b)(1) of this section. Only participants and official patrol vessels are allowed to enter the Buffer Zone.

(6) The Spectator Area is an area described by a line bounded by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined in paragraph (b)(4) of this section. All vessels within the Spectator Area shall be anchored or operate at a no-wake speed while transiting within the Spectator Area.

(7) 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). 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. The Captain of the Port Maryland-National Capital Region can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(8) 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. 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 periods. This section will be enforced from 8:30 a.m. until 6:30 p.m. on July 28, 2018, and from 8:30 a.m. until 6:30 p.m. on July 29, 2018.

Dated: May 2, 2018.

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.

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