



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0107]

RIN 1625-AA08

Special Local Regulation; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for certain navigable waters of the Choptank River. This action is necessary to provide for the safety of life on these waters located at Cambridge, MD, on July 27, 2019, and July 28, 2019, during a high-speed power boat racing event. This regulation prohibits 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 9:30 a.m. on July 27, 2019 to 6:30 p.m. on July 28, 2019. This rule will be enforced from 9:30 a.m. to 6:30 p.m. on July 27, 2019, and, from 9:30 a.m. to 6:30 p.m. on July 28, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0107 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. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, email *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
PATCOM	Coast Guard Patrol Commander
SNPRM	Supplemental notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard published an NPRM on March 18, 2019 (84 FR 9724), proposing to establish a special local regulation for the Thunder on the Choptank, on July 27, 2019, and July 28, 2019. The Coast Guard received two comments. The Coast Guard published an SNPRM on May 16, 2019 (84 FR 22079), to amend the proposed special local regulation to increase the size of the regulated area and make minor corrections to the designated spectator area coordinates for the Thunder on the Choptank, on July 27, 2019, and July 28, 2019, and reopen the comment period to account for these changes. The comment period closed June 17, 2019. The Coast Guard received no additional comments during the second request for comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule 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. Delaying the effective date of this rule is impracticable and contrary to public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this marine event.

Immediate action is needed to protect participants, spectators, and other persons and vessels during the high-speed race event on these navigable waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with these power boat races will be a safety concern for anyone intending to operate in or near the race area. The purpose of this rule is to protect event participants, spectators, and transiting vessels on specified waters of the Choptank River before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments to the docket responding to our NPRM published March 18, 2019. Both comments were in support of the Coast Guard's rulemaking. However, one commenter questioned why the regulation was needed, and wondered if instead waterway users could be directed safely away from the event site or if there could be stated times when waterway users could transit through the regulated area. The COTP Maryland-National Capital Region is issuing this special local regulation to ensure that all vessels are operated within the regulated area at a safe speed that minimizes wake near the event area. A COTP order, by comparison, would apply to only a single vessel. The Coast Guard issues special local regulations under authority of 46 U.S.C. 70041(a), which grants the Commandant authority to issue regulations to promote

the safety of life on navigable waters during regattas or marine parades. The Coast Guard issues such regulations in accordance with the Administrative Procedure Act's rulemaking requirements.

Vessel traffic will be able to safely transit the regulated area once the PATCOM deems it safe to do so. Patrol vessels will be present to monitor the event and enforce the special local regulation. In addition, Broadcast Notice to Mariners will also be made for this event, to begin prior to that start of the scheduled event, and to continue to notify the public, until immediately after its completion.

There are no changes in the regulatory text of this rule from the proposed rule in the SNPRM.

This rule establishes a special local regulation to be enforced from 9:30 a.m. to 6:30 p.m. on July 27, 2019, and from 9:30 a.m. to 6:30 on July 28, 2019. The regulated area will cover all navigable waters of 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 northeast 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; thence west along the Hambrooks Bay breakwall to latitude 38°35'33" N, longitude 076°05'17" W; thence south and east along the shoreline to and terminating at the point of origin.

The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after these power boat races, scheduled from 10 a.m. until 6 p.m. on July 27, 2019, and July 28, 2019. Except for participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or PATCOM before entering the regulated area while the rule is being enforced. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area once the PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as Official Patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. If permission is granted by the COTP or PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area. Official Patrol vessels will direct spectator vessels while within the regulated area. Vessels will be prohibited from loitering within the navigable channel. Only participant vessels and Official Patrols will be allowed to enter the race area.

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

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 rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule 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, duration and time of year of the racing event, which will impact a small designated area of the Choptank River for 18 total enforcement hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the special local regulation. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the COTP or PATCOM 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 received no comments from the Small Business Administration on this rulemaking. 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.

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 Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), 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 a temporary special local regulation for certain navigable waters of the Choptank River. This action is necessary to provide for the safety of life on these waters located at Cambridge, MD, on July 27, 2019, and July 28, 2019, during a high-speed power boat racing event. The temporary regulated area will be enforced for 18 hours during the power boat races. It is categorically excluded from further review under paragraph L61 in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Memorandum For the Record for Categorically Excluded Actions supporting this determination is 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: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.501T05-0107 to read as follows:

§ 100.501T05-0107 Special Local Regulation; Choptank River, Cambridge, MD.

(a) Definitions. As used in this section:

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.

Coast Guard Patrol Commander (PATCOM) 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.

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.

Participants means all persons and vessels registered with the event sponsor as participating in the Thunder on the Choptank or otherwise designated by the event sponsor as having a function tied to the event.

Spectators means all persons and vessels not registered with the event sponsor as participants or assigned as official patrols.

(b) Regulated Areas. All coordinates reference Datum NAD 1983. 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 northeast 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; thence west along the Hambrooks Bay breakwall to latitude 38°35'33" N, longitude 076°05'17" W; thence south and east along the shoreline to and terminating at the point of origin. The following locations are within the regulated area:

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

(2) *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.

(3) *Spectator Area*. All waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bound by line that commences at latitude 38°35'28" N, longitude 076°04'50" 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 COTP Maryland-National Capital Region or PATCOM 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 by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, 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). If permission is granted, the spectator may enter the designated Spectator Area or must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-

National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 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 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 periods.* This section will be enforced from 9:30 a.m. to 6:30 p.m. on July 27, 2019, and, from 9:30 a.m. to 6:30 p.m. on July 28, 2019.

Dated: June 21, 2019.

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