



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2019-0508]**

**RIN 1625-AA08**

**Special Local Regulation; Battle of the Bridges, Intracoastal Waterway; Venice, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for certain waters of the Intracoastal Waterway. This action is necessary to provide for the safety of life on these navigable waters in Venice, FL, during the Battle of the Bridges event. This rulemaking would prohibit persons and vessels from being in the race area unless authorized by the Captain of the Port St. Petersburg (COTP) or a designated representative.

**DATES:** This rule is effective from 7:30 a.m. until 4 p.m. on September, 28, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0508 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 Marine Science Technician First Class Michael Shackleford, U.S. Coast Guard; telephone 813-228-2191, email [Michael.D.Shackleford@uscg.mil](mailto:Michael.D.Shackleford@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
§	Section
U.S.C.	United States Code
ICW	Intracoastal Waterway

### **II. Background Information and Regulatory History**

On February 2, 2019, the Sarasota Scullers Youth Rowing Program notified the Coast Guard that it would be conducting the Battle of the Bridges sculler race from 6 a.m. to 6 p.m. on September 28, 2019. The race will take place on portions of the Intracoastal Waterway (ICW) in Venice, FL. In response, on August 2, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, “Special Local Regulation; Battle of the Bridges, Intracoastal Waterway; Venice, FL” (84 FR 37808). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended September 3, 2019, we received eighty-five comments.

### **III. Legal Authority and Need for the Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port St. Petersburg (COTP) has determined that potential hazards associated with the rowing event on September 28, 2019 will be a safety concern for anyone within the special local regulation area. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

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**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the rowing event.

#### **IV. Discussion of Comments and Changes to the Rule**

##### *A. Discussion of Comments*

The Coast Guard received eighty-five submissions from private citizens in response to the proposed rule. Forty-two commenters endorsed the Coast Guard's proposal. Forty-three commenters were opposed to the proposed rule for various reasons, discussed below.

Twenty-two comments expressed concerns about the monetary loss of several businesses and their employees that fall within the boundaries of this temporary special local regulation. The commenters stated businesses would lose customers due to the 12 hours the ICW would be closed as proposed in the regulatory text.

Twenty comments expressed concerns about not having access to the ICW during this event. The commenters stated that the ICW, and the public boat ramps along the ICW, would be closed for the duration of the event and the proposed regulatory text would not allow for any other boating traffic in the ICW while the event was underway.

Seven comments expressed concerns about not being able to access the Marine Max Marina located along the ICW during this event. The commenters stated that the marina would be inaccessible while the ICW was closed for the event.

Nine comments expressed concern regarding the event being too long. The commenters stated that the proposed twelve hour closure of the ICW for the event was too long and that event should be shortened.

Five comments expressed concern regarding there being no alternative routes around the closed section of the ICW. The commenters stated that the regulatory text did not provide another route for vessel traffic to take around the event.

Twelve comments expressed concern regarding the safety of boaters who may choose to transit into the Gulf of Mexico in order to get around the closed section of the ICW. These commenters expressed concerns about general boating and boating safety knowledge as well as the potential for adverse weather affecting the gulf waters.

The Coast Guard has taken these concerns into consideration and has determined to only close the ICW when the event is actively taking place. The closure times of the ICW are being modified to accommodate the opening of the ICW to allow for morning, midday, and afternoon vessel transits. This modification, while not providing an alternate route, does allow for times when vessels can transit the ICW. This modification will reduce the effective closure time of the ICW by approximately 4 and a half hours, which will allow businesses an opportunity to remain open the day of the event. These openings will allow for vessels to transit to and from the marina while the ICW remains open. This modification allows for times when vessels can transit the ICW instead of navigating into the Gulf of Mexico. The Venice Police Department confirmed that there are 4 other boats ramps in the area of the event that can be used as alternate boat ramps during this event. In the event of inclement weather, a Coast Guard designated representative

reserves the right to cancel the event, which would open the ICW up to normal vessel traffic.

Twenty-two comments expressed concern regarding the ICW not being a suitable location to hold this event. The commenters stated that there was a nearby rowing venue that was constructed for such rowing events. These comments are outside of the scope of this rulemaking as the Coast Guard is not involved in the process of selecting a venue for a sponsor's proposed event.

Seven comments expressed concern regarding the event taking place on a bad day of the week. The commenters stated that a Saturday is not a suitable day to host an event in the ICW and that it should have been on a weekday instead. These comments are outside of the scope of this rulemaking as the Coast Guard is not involved in the process of selecting a day to hold a sponsor's proposed event.

One comment was expressed regarding the event being hazardous to the marine environment. The commenter expressed concerns that a proper environmental review was not performed and that the use of mooring balls and lane markers for the event would endanger manatees and sea turtles. The National Environmental Policy Act requires federal agencies to consider the impacts to the human environment for events such as these. A Record of Environmental Consideration was completed for this event after the Coast Guard consulted with numerous environmental agencies, including U.S. Fish and Wildlife Service, Florida Department of Environmental Protection, Army Corps of Engineers, and the Florida Fish and Wildlife Conservation Commission. This is addressed in section V. F. "Environment" below.

We received seventeen comments that were generally negative towards the event, and while noted, they are beyond the scope of the rulemaking process.

#### *B. Discussion of Changes*

This rule contains one minor change in the regulatory text from the NPRM. In response to public comments, we have revised the regulatory text to mitigate the commenters concerns and to provide for a shorter closing of the ICW and also allow for a scheduled opening of the ICW in the midday. This change will allow boaters to transit the ICW at designated times, under the direction of a designated representative, instead of transiting into the gulf. The change will also allow for impacted businesses to conduct operations as well. Details of this change can be found in the regulatory text at the end of this document.

### **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, location, duration, and time-of-day of the special local regulation. This regulation would impact approximately 3.5 miles of the Intracoastal Waterway in Venice, FL for approximately 4 and a half hours, on one day. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulation, and the rule would allow vessels to seek permission to enter the race area. Advance notice of the regulation will be provide the local community with ample time to plan around the race event accordingly.

*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 special local regulation 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 call or

email 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 call or email 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 a special local regulation, which temporarily limits access to the portions of the Intracoastal Waterway in Venice, FL to race participants for approximately 4 and a half hours on one day. It is categorically excluded from further review under paragraph L(61) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration 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 call or email 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 § 100.35T07-0508 to read as follows:

**§ 100.35T07-0508 Special Local Regulation; Battle of the Bridges, Intracoastal Waterway; Venice, FL.**

(a) Regulated area. A regulated area is established to include a race area located on all waters of the Intracoastal Waterway south of a line made connecting the following points: 27°06'15'' N, 082°26'43'' W, to position 27°06'12'' N, 082°26'43'' W, and all waters of the Intracoastal Waterway north of a line made connecting the following points: 27°03'21'' N, 082°26'17'' W, to position 27°03'19'' N, 082°26'15'' W. All coordinates are North American Datum 1983.

(b) Definitions. 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 COTP St. Petersburg in the enforcement of the regulated areas.

“Participant” means all persons and vessels registered with the event sponsor as a participant in the event.

(c) Regulations. (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area unless authorized by the Captain of the Port (COTP) St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the race area may contact the COTP St. Petersburg by telephone at (727) 824-7506 or via VHF-FM radio Channel 16 to request authorization.

(3) If authorization to enter, transit through, anchor in, or remain within the race area is granted, all persons and vessels receiving such authorization shall comply with the instructions of the COTP or a designated representative.

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

(d) Enforcement period. This rule will be enforced from 7:30 a.m. until 11:30 a.m., and from 12:30 p.m. to 4 p.m. on September 28, 2019.

Dated: September 20, 2019.

Matthew A. Thompson,  
Captain, U.S. Coast Guard,  
Captain of the Port Saint Petersburg.

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