



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2020-0207]

RIN 1625-AA08

Special Local Regulation; USA Triathlon, Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for certain waters of the Milwaukee Harbor. This action is necessary to provide for the safety of life on these navigable waters within the Lake Shore State Park Lagoon during a triathlon swim event taking place from August 7, 2020 through August 9, 2020. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Lake Michigan or a designated representative. 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-2020-0207 using the Federal eRulemaking Portal at <https://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 Chief Petty Officer Kyle Weitzell, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7148, email Kyle.W.Weitzell@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On January 10, 2020, USA Triathlon notified the Coast Guard that it will be hosting a triathlon in Milwaukee, WI from August 7, 2020 through August 9, 2020. Over the course of the three days this triathlon is being held, there will be as many as 6,000 participants involved in the swim portion of the triathlon in the Lake Shore State Park Lagoon within the Milwaukee Harbor. The hazard from this triathlon is the large number of people and support watercraft, including kayaks, personal watercraft, standup paddleboards, and other small boats, in the lagoon which will impede normal navigation. The Captain of the Port Lake Michigan (COTP) has determined that this hazard would be a safety concern for anyone within the lagoon during the swim portion of the triathlon.

The purpose of this proposed rulemaking is to protect the safety of persons, vessels, and the navigable waters within the Lake Shore State Park Lagoon before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking

under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233).

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 8 a.m. on August 7, 2020 through 2 p.m. on August 9, 2020. The special local regulation would cover all navigable waters of the Lake Shore State Park Lagoon in the Milwaukee Harbor within an area bound by coordinates 43° 02.20' N, 087° 53.69' W, then south to 43° 01.75' N, 087° 53.71' W, then southwest to 43° 01.73' N, 087° 53.96' W, then northeast to 43° 02.20' N, 087° 53.83' W, then east to point of origin. The duration of the regulation is intended to protect the safety of persons, vessels, and these navigable waters before, during, and after the swim portion of the triathlon. No vessel or person, except those participating in the event, would be permitted to enter the regulated area without obtaining permission from the COTP or the Patrol Commander. The daily schedule of the swim portion of the triathlon will be made available publicly by Broadcast Notice to Mariners. 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 location, size, and duration of this proposed special local regulation. This regulation will be in effect only on the Lake Shore State Park Lagoon during the swim portion of the triathlon from August 7, 2020 through August 9, 2020. Additionally, the COTP may consider the movement of persons and vessels through or within the regulated, if it is 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 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 safety zone 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 call or email 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 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 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 Directive 023-01, Rev. 1, associated implementing instructions, 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 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 three days that would prohibit entry in the Lake Shore State Park Lagoon within the Milwaukee Harbor during the swim portion of a triathlon. 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. 1. 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 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.

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 <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email 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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://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 is proposing 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: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T09-0207 to read as follows:

§100.T09-0207 Special Local Regulation; USA Triathlon, Milwaukee Harbor, Milwaukee, WI

(a) *Regulated area.* This area includes all waters of the Lake Shore State Park Lagoon in the Milwaukee Harbor within an area bound by coordinates 43° 02.20' N, 087° 53.69' W, then south to 43° 01.75' N, 087° 53.71' W, then southwest to 43° 01.73' N, 087° 53.96' W, then northeast to 43° 02.20' N, 087° 53.83' W, then east to point of origin.

(b) *Special Local Regulations.* (1) The regulations in this section, along with the regulations of §100.901, apply to this marine event. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Captain of the Port Lake Michigan (COTP) or the Patrol Commander.

(2) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the Patrol Commander on VHF-FM Channel 16 to obtain permission to do so. Vessel operators given permission to enter or operate within the regulated area must comply with all directions given to them by the COTP or the Patrol Commander.

(c) *Effective dates.* These regulations are in effect from 8 a.m. on August 7, 2020 through 2 p.m. on August 9, 2020. Public notice of specific enforcement times will be made available through Broadcast Notice to Mariners.

Dated: April 1, 2020.

T.J. STUHLREYER,
CAPTAIN, U.S. Coast Guard,
Captain of the Port Lake Michigan.

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