



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: Temporary final rule.

SUMMARY: The Coast Guard is establishing 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. This rulemaking will prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: This rule is effective from 8 a.m. on August 7, 2020 through 2 p.m. on August 9, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0207 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 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 Information and Regulatory History

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. In response, on April 8, 2020, the Coast Guard published a Notice Of Proposed Rulemaking (NPRM) titled “Special Local Regulation; USA Triathlon, Milwaukee Harbor, Milwaukee, WI” (85 FR 19709). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this triathlon swim event. During the comment period that ended May 8, 2020, the Coast Guard received five comments.

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 Lake Michigan (COTP) has determined that potential hazards associated with the swim portion of the triathlon from August 7, 2020 through August 9, 2020 will be a safety concern for anyone within the Lake Shore State Park Lagoon. The

purpose of this rule is to protect safety of persons, vessels, and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received five comments on our NPRM published April 8, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

One comment expressed agreement with the proposed rule in that it is necessary to protect triathlon participants from potential injury.

One comment expressed concern regarding whether it was appropriate to hold this event during the COVID-19 pandemic, asked whether this event can take place next year, and asked whether the City of Milwaukee was aware of the event. In response to this comment, the process of issuing a special local regulation for this event does not constitute approval of the event. The Coast Guard is working closely with state and local governments, health officials, and sponsors of marine events to determine whether an event can be held safely. At the time this regulation will be published, we still face uncertainty with regard to how the COVID-19 pandemic will play out in the months to come. As we get closer to the event date, there may be the possibility that the event will be cancelled due to ongoing state or local restrictions put in place for large gatherings as a result of the COVID-19 pandemic. That being said, the COTP is continuing to implement these special local regulations in case this event does occur as scheduled, in order to protect persons, vessels, and the navigable waters of the United States. As of the publication of this rule, the COTP is not aware of any plans from the sponsor of this event to postpone this event until 2021. Additionally, the City of Milwaukee maintains a

separate permitting process, independent from the process employed by the Coast Guard. The City of Milwaukee is aware of this event and will act in accordance with their own regulations, policies, and procedures.

Two comments expressed concern for the adequacy of environmental protection due to this regulation. Both comments expressed concern that this regulation places priority on the protection of human life, rather than wildlife, and that a triathlon would disturb wildlife in the event area. Paragraph IV.F of the NPRM published on April 8, 2020 discusses the environmental review for this special local regulation, which has been conducted in accordance with the National Environmental Policy Act of 1969 (NEPA). Under NEPA, a review of this regulation evaluated the potential effect on the human environment. NEPA, as codified in 40 CFR 1508.14, clarifies the “human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” As such, the environmental review conducted for this regulation has taken into account potential effects on endangered and threatened species, critical habitats, migratory birds, wildlife refuges and reserves, essential fish habitats, and coastal management zones, in addition to historical and cultural impacts. Given the action taken by the COTP to limit access to a small portion of navigable waters of the United States that is routinely used for recreation, it was determined, as stated in the NPRM published on April 8, 2020, that actions such as this have been found to have no significant effect on the environment and are excluded from further review. Refer to Paragraph V.F of this temporary rule for more information on environmental review of this regulation.

Finally, one comment was beyond the scope of the proposed regulation and is not addressed herein.

This rule establishes a special local regulation from 8 a.m. on August 7, 2020 through 2 p.m. on August 9, 2020. The special local regulation will 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.

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 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 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 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.

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, 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 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 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. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

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.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: June 4, 2020

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