



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2020-0361]

RIN 1625-AA08

Special Local Regulation; North Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of the North Atlantic Ocean adjacent to Ocean City, MD. This action is necessary to provide for the safety of life on these navigable waters located at Ocean City, MD, during activities associated with an air show event from August 13, 2020, through August 16, 2020. This rule prohibits 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.

DATES: This rule is effective from August 13, 2020, through August 16, 2020. It will be enforced from 9 a.m. to 6 p.m. each day the rule is in effect.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0361 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 MST2 Shaun Landante, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2516, e-mail Shaun.C.Landante@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
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an NPRM would be impracticable and contrary to the public interest. On June 16, 2020, the Town of Ocean City, MD, notified the Coast Guard that it will be conducting the 2020 Ocean City Air Show from 10 a.m. to 5 p.m. on August 16, 2020. The annual air show consists of various types of military and civilian aircraft performing low-flying, high-speed precision maneuvers and aerial stunts. In addition to these two air show performance dates, approach and circle maneuvers will be conducted by the U.S. Navy's

Blue Angels flight demonstration squadron aircraft between 10 a.m. and 5 p.m. on August 13, 2020, and a full practice show rehearsal will be conducted by all air show performers from 10 a.m. to 5 p.m. on August 14, 2020. We must establish this safety zone by August 13, 2020, to ensure the safety of participants and nearby waterway users. Hazards from the air show event include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and near or actual contact among participants and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating near a designated navigation channel, as well as operating adjacent to a popular summer beach area and its numerous oceanside businesses.

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 and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the “Ocean City Air Show ” event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231). The Captain of the Port Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the air show, to be held from August 13, 2020 through August 16, 2020, will be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of the North Atlantic Ocean. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone for the duration of this

event.

IV. Discussion of the Rule

This rule establishes special local regulations from 9 a.m. on August 13, 2020, through 6 p.m. on August 16, 2020. The regulated area will cover all navigable waters of the North Atlantic Ocean within an area bounded by the following coordinates:

commencing at a point near the shoreline in the vicinity of 33rd Street, Ocean City, MD, latitude 38°21'48.8" N, longitude 075°04'10" W, thence eastward to latitude 38°21'32" N, longitude 075°03'12" W, thence south to latitude 38°19'22.7" N, longitude 075°04'09.5" W, thence west to latitude 38°19'38.5" N, longitude 075°05'05.4" W, thence north along the shoreline to point of origin, located adjacent to Ocean City, MD.

The duration of the zone and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during and after the air show and its related activities, scheduled to take place from 10 a.m. on August 13, 2020, through 5 p.m. on August 16, 2020. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

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 size, location and duration of the regulated area, which will impact a small designated area of the North Atlantic Ocean adjacent to Ocean City, MD for 36 total enforcement hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow vessels and persons to seek permission to enter the regulated area.

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 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 safety zone may be small entities, for the reasons stated in section IV.A above, this proposed 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 will 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 implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for 36 hours. 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.T05-0361 to read as follows:

§ 100.T05-0361 Ocean City Air Show, North Atlantic Ocean, Ocean City, MD.

(a) *Regulated area.* The regulations in this section apply to all navigable waters of the North Atlantic Ocean within an area bounded by the following coordinates: commencing at a point near the shoreline in vicinity of 33rd Street, Ocean City, MD, latitude 38°21'48.8" N, longitude 075°04'10" W, thence eastward to latitude 38°21'32" N, longitude 075°03'12" W, thence south to latitude 38°19'22.7" N, longitude 075°04'09.5" W, thence west to latitude 38°19'38.5" N, longitude 075°05'05.4" W, thence north along the shoreline to point of origin, located adjacent to Ocean City, MD.

These coordinates are based on datum NAD 1983.

(b) *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.

Participant means all persons and vessels registered with the event sponsor as participating in the Ocean City Air Show or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Regulations.* (1) Except for participants and vessels already at berth, everyone other than participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland-National Capital Region or PATCOM.

(2) To seek permission to enter, 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). Those in the regulated area must comply with all lawful orders or directions given

to them by the COTP Maryland-National Capital Region, PATCOM, or official patrol.

(3) Vessels are required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft.

(4) The air show aerobatics area located within the regulated area described in paragraph (a) of this section is restricted to participants.

(5) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

(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 a.m. to 6 p.m. on August 13, 2020, from 9 a.m. to 6 p.m. on August 14, 2020, from 9 a.m. to 6 p.m. on August 15, 2020, and, from 9 a.m. to 6 p.m. on August 16, 2020.

Dated: August 4, 2020

Joseph B. Loring,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.
[FR Doc. 2020-17480 Filed: 8/7/2020 8:45 am; Publication Date: 8/10/2020]