



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2023-0690]

RIN 1625-AA08

Special Local Regulations; Recurring Marine Events, Sector Key West, Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising existing regulations by updating the table for existing events in the Seventh Coast Guard District Captain of the Port (COTP) Key West. This action is necessary to provide for the safety of life on these navigable waters in Key West, FL. Through this rule, the current list of recurring special local regulations is updated with the removal of an event that no longer takes place, the addition of two events, and revisions to existing events. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0690 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Hailye Wilson, Sector Key West, Waterways Management

Division, Coast Guard; telephone (305) 292-8768 (ext. 768), e-mail

Hailye.M.Wilson@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 November 6, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulations; Recurring Marine Events, Sector Key West, Update.¹ 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 December 6, 2023, we received 0 comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The purpose of this rule is to ensure that the public is informed of the most up to date recurring special local regulations.

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 public interest because immediate action is needed to ensure the rule is in place before the June 2024 events listed Items No. 2 and No.3 in Table 1 to § 100.701.

IV. Discussion of Comments, Changes, and the Rule

¹ 88 FR 76159.

As noted above, we received no comments on our NPRM published November 6, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule makes the following changes in 33 CFR 100.701 to paragraph (b) in Table 1 to § 100.701:

1. Removing the Yachting Key West Race Week special local regulation (SLR) from Line 1 since this event no longer occurs in the COTP Key West zone.
2. Moving the existing SLR in Line 2 to Line 1.
3. Moving the SLR in Line 3 to Line 2 and changing the date from the “1st Weekend of June” to “One Saturday in June.” There will also be non-substantive changes made to spelling and word usage for this SLR. In addition, a contingency will be added stating, “Depending on the weather on the day of race, the racecourse might proceed counterclockwise to accommodate for current and wind.”
4. Inserting a new SLR in Line 3 for the Annual Swim Around Key West.
5. Inserting a new SLR in Line 4 for the Alligator Reef Lighthouse Swim / Friends of The Pool, Inc. and;
6. Moving the existing SLR in Line 4 to Line 5, and changing the event sponsor name from “Super Boat International Productions, Inc.” to “Race World Offshore.”

Marine events listed in paragraph (b) in Table 1 to § 100.701 are listed as recurring over a particular time, during each month and each year. Exact dates are intentionally omitted since calendar dates for specific events change from year to year. Once dates for a marine event are known, the Coast Guard notifies the public it intends to enforce the special local regulation through various means including a notice of enforcement published in the **Federal Register**, Local Notice to Mariners, and 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. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the special local regulations. These areas are limited in size and duration, and usually do not affect high vessel traffic areas. Moreover, the Coast Guard would provide advance notice of the regulated areas to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, and the rule would allow vessels 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 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 safety zone 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 revising an existing recurring event to reflect a date and time change for the event. It is categorically excluded from further review under paragraph L61 in Table 3-1 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

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

Harbors, Marine Safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Parts 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. In § 100.701, revise section (b) of Table 1 to §100.701, to read as follows:

§ 100.701 Special Local Regulations; Marine Events in the Seventh Coast Guard District.

* * * * *

Table 1 to § 100.701

| Number/date | Event | Sponsor | Location |
|---|---------------------------------------|-----------------------------|---|
| | * | * * * * * | * |
| (b) COTP Zone Key West; Special Local Regulations | | | |
| 1. Last Friday in April | Conch Republic Navy Parade and Battle | Conch Republic Navy, LLC | Location: All waters approximately 150 yards offshore from Ocean Key Sunset Pier, Mallory Square and Pier B within the Key West Harbor in Key West, Florida. |
| 2. One Saturday in June | Swim Around Key West | College of the Florida Keys | Location: Beginning at Smathers Beach in Key West, Florida. The regulated area will move, west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Cut, south on Cow Key |

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|-------------------------|-----------------------------|-------------|---|
| | | | <p>Channel and west back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels. Depending on the weather on the day of race, the racecourse might proceed counter-clockwise to accommodate for current and wind.</p> |
| 3. One Saturday in June | Annual Swim Around Key West | Anna Fugina | <p>Location: Beginning at Higgs Beach in Key West, Florida. The regulated area will move, west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Cut, south on Cow Key Channel and west, past Smathers Beach and back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels. Depending on the weather on the day of race, the racecourse might proceed counter-clockwise to</p> |

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|--|--------------------------------------|---------------------------|--|
| | | | accommodate for current and wind. |
| 4. One Saturday in September | Alligator Reef Lighthouse Swim | Friends of The Pool, Inc. | Location(s) (Primary): Beginning at a point Latitude 24°54.82' N, longitude 080°38.03' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to latitude 24°51.07' N, longitude 080°37.14' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to point of origin at latitude 24°54.82' N, longitude 080°38.03' W. Location(s) (Alternate) ¹ : Beginning at a point Latitude 24°54.82' N, longitude 080°38.03' W, thence to latitude 24°53.25' N, longitude 080°37.04' W, thence to latitude 24°52.05' N, longitude 080°38.85' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to point of origin at latitude 24°54.82' N, longitude 080°38.03' W. |
| 5. 2nd week (Wednesday through Sunday) in November | Key West Offshore World Championship | Race World Offshore | Location: In the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance. |
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Dated: May 15, 2024.

Jason D. Ingram,

Captain, U.S. Coast Guard,

Captain of the Port, Sector Key West.

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