

why the records are exempt from specific provisions of 5 U.S.C. 552a.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD 07-05-019]

RIN 1625-AA08

#### Special Local Regulations: Annual Offshore Super Series Boat Race, Fort Myers Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing permanent special local regulations for the Offshore Super Series Boat Race in Fort Myers Beach Florida. This event will be held annually during the second consecutive Saturday and Sunday of June between 10 a.m. and 5 p.m. EDT (Eastern Daylight Time). Historically, there have been approximately 350 participant and spectator craft. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters of the United States. This rule is necessary to ensure the safety of life for the participating vessels, spectators, and mariners in the area on the navigable waters of the United States.

**DATES:** This rule is effective July 15, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD 07-05-019] and are available for inspection or copying at Coast Guard Marine Safety Office Tampa between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Jennifer Andrew at Coast Guard Marine Safety Office Tampa (813) 228-2191 Ext 8203.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On April 26, 2005, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations: Annual Offshore Super Series Boat Race, Fort Myers Beach, FL in the **Federal Register** (70 FR 21376). We received no comments on the proposed

rule. No public meeting was requested, and none was held.

#### Background and Purpose

The Offshore Super Series will sponsor an offshore powerboat race on the near-shore waters of Fort Myers Beach, Florida. The annual event will be held on the second consecutive Saturday and Sunday in June from 10 a.m. to 5 p.m. The event will host approximately 50 participant vessels that travel up to speeds of 130 mph and approximately 300 spectator craft. This regulation is needed to provide for the safety of life on the Navigable waters of the United States during the Annual Offshore Super Series Boat Race in the vicinity of the racecourse. The anticipated concentration of spectator and participant vessels associated with the event poses a safety concern that is addressed in this special local regulation.

#### Discussion of Comments and Changes

No comments were received for this rule.

#### Discussion of Rule

This regulation includes a regulated area around the racecourse that will prohibit all non-participant vessels and persons from entering the regulated area annually from 10 a.m. to 5 p.m. on the second consecutive Saturday and Sunday of June. The regulation will only permit anchoring of spectator vessels seaward of a designated spectator line. All spectator craft will be required to remain seaward of a designated spectator line. Although the regulation allows continuous entry and exit to Matanzas Pass Channel for the duration of the event, the northern portion of the regulated area is in very close proximity to the channel entrance. In order to avoid incursions into the northern portion of the regulated area by vessels avoiding collision due to traffic congestion in the channel, the rule will require vessels entering and exiting Matanzas Pass to proceed cautiously and take early action to avoid close-quarters situations until finally past and clear of the regulated area. This regulation is intended to provide for the safety of life on the navigable waters of the United States for event participants and for mariners traveling in the vicinity of the near-shore waters of Fort Myers Beach Florida.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The regulation will be in effect for only a limited time in an area where vessel traffic is limited and vessels will still be allowed to enter and exit through Matanzas Pass Channel.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit near to shore at Fort Myers Beach, FL in the vicinity of Matanzas Pass annually from 10 a.m. to 5 p.m. on the second consecutive Saturday and Sunday in June. This rule will not have a significant economic impact on a substantial number of small entities since it would only be in effect for a limited time in an area where vessel traffic is limited and vessels will still be allowed to enter and exit through Matanzas Pass Channel.

#### Assistance for Small Entities

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).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### 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 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.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. As a special local regulation issued in conjunction with a boat race, this rule satisfies the requirements of paragraph (34)(h). Under figure 2–1, paragraph (34)(h), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

### 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 proposes to amend 33 CFR part 100 as follows:

### PART 100—MARINE EVENTS AND REGATTAS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 100.740 to read as follows:

#### § 100.740 Annual Offshore Super Series Boat Race; Fort Myers Beach, FL.

(a) *Regulated area.* (1) The regulated area is formed by the following coordinates; point 1: 26°27'43"N, 81°58'22"W south to point 2: 26°27'05"N, 81°58'37"W east to point 3: 26°25'39"N, 81°55'46"W north to point 4: 26°26'14"N, 81°55'22"W and west to original point 1: 26°27'43"N, 81°58'22"W. All coordinates referenced use datum: NAD 83.

(2) The spectator line is formed by the following coordinates; point 1: 26°26'53"N, 81°58'27"W east to point 2: 26°25'32"N, 81°53'57"W. All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.*

(1) Non-participant vessels and persons are prohibited from entering the regulated area as defined in paragraph (a)(1) of this section.

(2) All vessel entering and exiting Matanzas Pass Channel shall proceed cautiously and take early action to avoid close-quarters situations until finally past and clear of the regulated area.

(3) Anchoring is only permitted seaward of the spectator line as defined in paragraph (a)(2) of this section.

(c) *Enforcement Dates.* This section will be enforced annually from 10 a.m. to 5 p.m. EDT on the second consecutive Saturday and Sunday of June.

Dated: June 2, 2005.

#### W.E. Justice,

Capt, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

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