

Counsel assigned to the Office of the Director, Secretary of the Navy Council of Review Boards. In addition, the NDRB may request advisory opinions from staff offices of the Department of the Navy, including, but not limited to the General Counsel and the Judge Advocate General.

Dated: December 28, 2009.

A.M. Vallandigham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2009-0430]

RIN 1625-AA08

Special Local Regulation for Marine Events; Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the list of recurring marine events within the Fifth Coast Guard District. These regulations make minor changes to the regulated areas of two permitted marine events listed in the table attached to the regulation. These special local regulations are necessary to provide for the safety of life on navigable waters during marine events. This action will restrict vessel traffic in portions of the Chesapeake Bay and Assateague Channel, Virginia.

DATES: This rule is effective February 5, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0430 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0430 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or

e-mail Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, 757-398-6204 or e-mail Dennis.M.Sens@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 25, 2009, we published an Interim final rule; request for comments entitled Special Local Regulation for Marine Events; Recurring Marine Events in the Fifth Coast Guard District in the **Federal Register** (74 FR 30220). We received no comments on the interim final rule. No public meeting was requested and none was held.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation amends two marine events listed in 33 CFR Part 100.501, Table to § 100.501. They are event No. 20, The Great Chesapeake Bay Bridges Swim Races and Chesapeake Challenge One Mile Swim and event No. 42, Pony Penning Swim.

Annually, the Great Chesapeake Bay Swim, Inc. sponsors the "The Great Chesapeake Bay Bridges Swim Races and Chesapeake Challenge One Mile Swim" on the waters of the Chesapeake Bay near the William P. Lane Jr. Memorial (Chesapeake Bay) Bridge. The regulated area is a line that runs parallel to both the north and south spans of the bridge and includes the waters 500 yards north of the north span and 500 yards south of the south span of the bridge. The regulated area listed in the Table to § 100.501 for event No. 20 is amended to describe the area as follows: The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00'36" N, longitude 076°23'53" W and the eastern shore at latitude 38°59'14" N, longitude 076°20'00" W; and 500 yards south of the south span of the bridge from the western shore at latitude 39°00'16" N, longitude 076°24'30" W and the eastern shore at latitude 38°58'39" N, longitude 076°20'10" W. The regulated area as described is amended to ensure the safety of participants and support vessels and in accordance with 33 CFR 100.501 will be enforced for the

duration of the marine event. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted in this segment of the Chesapeake Bay. Under provisions of 33 CFR 100.501, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic may be allowed to transit the regulated area only when the Patrol Commander determines it is safe to do so.

Annually, the Chincoteague Volunteer Fire Department sponsors the "The Pony Penning Swim" on the waters of Assateague Channel that runs between Chincoteague and Assateague Islands. The regulated area includes the waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55'00" N, longitude 075°22'45" W, to latitude 37°54'47" N, longitude 075°22'45" W, and to the south by a line drawn from latitude 37°54'47" N, longitude 075°22'45" W, to latitude 37°54'47" N, longitude 075°23'04" W. The regulated area as described, is amended to ensure the safety of participants, wildlife and support vessels, and in accordance with 33 CFR 100.501 will be enforced for the duration of the marine event. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted in this segment of Assateague Channel. Vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Specific information on each event, including the exact dates, times and description of the regulated area, will be provided to the public through a Local Notice to Mariners published before the event, as well as through Broadcast Notice to Mariners. The public will also be notified about these marine events by local newspapers, radio and television stations. The various methods of notification provided by the Coast Guard and local community media outlets will facilitate informing mariners so they can adjust their plans accordingly.

Discussion of Comments and Changes

The Coast Guard did not receive any comments in response to the interim rule published in the **Federal Register**. Accordingly, the Coast Guard is establishing as permanent the interim rule modifying the special local regulations on the specified waters of the Chesapeake Bay and Assateague Channel, Virginia.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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.

Although this rule prevents traffic from transiting a portion of certain waterways during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

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 would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the areas where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the

regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the Interim final rule we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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.

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 (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.

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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not

individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

Under figure 2-1, paragraph (34)(h), of the Instruction, an environmental analysis checklist 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 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: 33 U.S.C. 1233.

■ 2. In § 100.501, in the Table to § 100.501, revise number 20 and number 42 to read as follows:

§ 100.501 Special local regulations; Marine events in the fifth Coast Guard district.

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TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| Number | Date | Event | Sponsor | Location |
|---|---|--|---|--|
| Coast Guard Sector Baltimore—COTP Zone | | | | |
| 20 | June—2nd Sunday. | The Great Chesapeake Bay Bridge Swim Races and Chesapeake Challenge One Mile Swim. | Great Chesapeake Bay Swim, Inc. | The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00'36" N, longitude 076°23'53" W and the eastern shore at latitude 38°59'14" N, longitude 076°20'00" W, and 500 yards south of the south span of the bridge from the western shore at latitude 39°00'16" N, longitude 076°24'30" W and the eastern shore at latitude 38°58'39" N, longitude 076°20'10" W. |
| Coast Guard Sector Hampton Roads—COTP Zone | | | | |
| 42 | July—last Wednesday and following Friday. | Pony Penning Swim. | Chincoteague Volunteer Fire Department. | The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55'00" N, longitude 075°22'45" W, to latitude 37°54'47" N, longitude 075°22'45" W, and to the south by a line drawn from latitude 37°54'47" N, longitude 075°22'45" W, to latitude 37°54'47" N, longitude 075°23'04" W. |

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Dated: December 17, 2009.

Wayne E. Justice,
Rear Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.
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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 138

[Docket No. USCG-2008-0007]

RIN 1625-AB25

Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting, as a final rule, without change, an interim rule published on July 1, 2009. The interim rule increased the limits of liability that apply under the Oil Pollution Act of 1990 (OPA 90) to vessels and to deepwater ports subject to the Deepwater Port Act of 1974, to reflect significant increases in the Consumer Price Index (CPI). The interim rule also established the methodology the Coast Guard uses to adjust the OPA 90 limits of liability for inflation, and made minor regulatory