

# Rules and Regulations

Federal Register

Vol. 70, No. 159

Thursday, August 18, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-05-072]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for “Thunder over the Boardwalk”, an aerial demonstration to be held over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in portions of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the aerial demonstration.

**DATES:** This rule is effective from 10:30 a.m. to 3 p.m. on August 31, 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 CGD05-05-072 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

### Regulatory Information

On July 11, 2005, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ in the **Federal Register** (70 FR 39697). No letters were received commenting on the proposed rule. No public meeting was requested, and none was held.

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 would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However, advance notifications will be made to mariners via marine information broadcasts, area newspapers and local radio stations.

### Background and Purpose

On August 31, 2005, the Atlantic City Chamber of Commerce will sponsor the “Thunder over the Boardwalk”. The event will consist of high performance jet aircraft performing low altitude aerial maneuvers over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. A fleet of spectator vessels is expected to gather nearby to view the aerial demonstration. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

### 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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean adjacent to Atlantic City,

New Jersey during the event, 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, area newspapers and local radio stations so mariners can adjust their plans accordingly.

### 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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Atlantic Ocean during the event.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 10:30 a.m. to 3 p.m. on August 31, 2005. Affected waterway users can pass safely around the regulated area. Before the enforcement period, we 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), 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).

### 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.

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 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, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary section, § 100.35–T05–072 to read as follows:

#### § 100.35–T05–072 Atlantic Ocean, Atlantic City, NJ.

(a) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21'31" N, longitude 074°25'04" W, thence to latitude 39°21'08" N, longitude 074°24'48" W, thence southwesterly to latitude 39°20'16" N, longitude 074°27'17" W, thence northwesterly to a point along the shoreline at latitude 39°20'44" N, longitude 074°27'31" W, thence northeasterly along the shoreline to latitude 39°21'31" N, longitude 074°25'04" W. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) Enforcement period. This section will be enforced from 10:30 a.m. to 3 p.m. on August 31, 2005.

Dated: August 5, 2005.

**L.L. Hereth,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.*

[FR Doc. 05-16413 Filed 8-17-05; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-05-090]

RIN 1625-AA08

#### Special Local Regulation for Marine Events; Patuxent River, Solomons, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations during the "Patuxent River Air Expo 2005", an event to be held over the waters of the lower Patuxent River near Solomons, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Patuxent River during the event.

**DATES:** This rule is effective from 9 a.m. on September 2, 2005 to 5 p.m. on September 4, 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 CGD05-05-090 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the late submission of marine event request by the event organizer, there is not sufficient time for the publishing of an

NPRM before the event. The event will take place September 2-4, 2005. Publishing an NPRM would be contrary to the public interest as there is not sufficient time for a notice and comment period and immediate action is needed to protect persons and vessels from the event's potential hazards. Because of the danger posed by low flying aircraft performing precision maneuvers and aerial stunts, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have the regulations in effect during the event.

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**. Making this rule effective 30 days after publication is both impractical and contrary to the public interest since there is not sufficient time to publish a proposed rule in advance of the event and immediate action is needed to protect persons and vessels from the potential hazards associated with this event. However, advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

##### Background and Purpose

From September 2, through September 4, 2005, U.S. Naval Air Station Patuxent River will conduct the "Patuxent River Air Expo 2005". This event will take place over the waters of the lower Patuxent River, between Fishing Point and the base of the breakwall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River. The event will consist of military and civilian aircraft performing low-flying high speed precision maneuvers and aerial stunts over the waters of the Patuxent River. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the air show.

##### Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the lower Patuxent River between Fishing Point and the base of the breakwall marking the entrance to the East Seaplane Basin at the Naval Air Station. The regulated area includes a portion of the waters of the Patuxent River that is approximately 850 yards long and 700 yards wide. The temporary special local regulations will be in effect from 9 a.m. on September 2, 2005 until 5 p.m. on September 4,

2005. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance safety of participants, spectators and transiting vessels.

##### 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.

Although this regulation will prevent traffic from transiting a portion of the Patuxent River during the event, 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 the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

##### 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