

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD05-04-013]

RIN 1625-AA08

**Special Local Regulations for Marine Events; Maryland Swim for Life, Chester River, Chestertown, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent special local regulation for the "Maryland Swim for Life," a marine event held on the waters of the Chester River near Chestertown, Maryland. This action is 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 Chester River during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before June 7, 2004.

**ADDRESSES:** You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398-6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-04-013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments

and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The Maryland Swim for Life Association annually sponsors the "Maryland Swim for Life", an open water swimming competition held on the waters of the Chester River, near Chestertown, Maryland. The event is held each year on the second Saturday in July. Approximately 120 swimmers start from Rolph's Wharf and swim upriver 3 miles then swim down river returning back to Rolph's Wharf. A fleet of approximately 25 support vessels accompanies the swimmers. To provide for the safety of participants and support vessels, the Coast Guard will restrict vessel traffic in the event area during the swim.

**Discussion of Proposed Rule**

The Coast Guard proposes to establish a permanent regulated area on specified waters of the Chester River, near Chestertown, Maryland. The regulated area would include all waters of the Chester River between Rolph's Wharf and the Maryland S.R. 213 Highway Bridge. The proposed special local regulations would be enforced annually on the second Saturday in July. The effect would 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 would be allowed to enter or remain in the regulated area. The proposed regulated area is needed to control vessel traffic during the event to enhance the safety of participants and transiting vessels.

**Regulatory Evaluation**

This proposed 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 proposed regulation would prevent traffic from transiting a portion of the Chester River during the event, the effect of this proposed regulation would not be significant due to the limited duration that the regulated area will be enforced 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. The Coast Guard would also publish an annual notice of implementation of a regulation in the **Federal Register**, setting out the exact date of the event.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed 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 a portion of the Chester River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be enforced for only one day each year. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this proposed rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

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 proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, 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. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. 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—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 § 100.533 to read as follows:

#### § 100.533 Maryland Swim for Life, Chester River, Chestertown, MD.

(a) *Regulated Area.* The regulated area is established for waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10'16" N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12'30" N by the Maryland S.R. 213 Highway Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* The following definitions apply to this section:

*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 Baltimore.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore 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 this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol; and

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced annually on the second

Saturday in July. A notice of implementation of this section will be published annually in the **Federal Register** and disseminated through Fifth District Local Notice to Mariners and marine Safety Radio Broadcast on VHF-FM marine band radio channel 22 (157.1 MHz)

Dated: March 5, 2004.

**Sally Brice-O'Hara,**

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

[FR Doc. 04-7791 Filed 4-5-04; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01-04-019]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Harlem River, Newtown Creek, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Willis Avenue Bridge, mile 1.5, the Third Avenue Bridge, mile 1.9, the Madison Avenue Bridge, mile 2.3, all across the Harlem River and the Pulaski Bridge, mile 0.6, across Newtown Creek. This notice of proposed rulemaking would allow the bridge owner to keep the above bridges closed for periods of time on the first Sunday in both May and November in order to facilitate the running of the Five Borough Bike Tour and the New York City Marathon, respectively.

**DATES:** Comments must reach the Coast Guard on or before June 7, 2004.

**ADDRESSES:** You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast

Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joe Schmied, Project Officer, First Coast Guard District, (212) 668-7195.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-04-019), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

The Willis Avenue Bridge, mile 1.5, across the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 30 feet at mean low water (MLW) in the closed position.

The Madison Avenue Bridge, at mile 2.3, across the Harlem River has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position.

The Third Avenue Bridge, at mile 1.9, across the Harlem River has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Pulaski Bridge across Newtown Creek, mile 0.6, has a vertical clearance of 39 feet at MHW and 43 feet at MLW in the closed position. The current operating regulations for the Pulaski Bridge listed at 117.801(g) require it to open on signal if at least a two-hour advance notice is given.

The current operating regulations for the Willis Avenue, Third Avenue, and Madison Avenue bridges, require the

bridges to open on signal from 10 a.m. to 5 p.m., if at least four-hours notice is given.

The owner of the bridges, New York City Department of Transportation requested a change to the operating regulations for the Willis Avenue Bridge, the Third Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to facilitate the running of the Five Borough Bike Tour and the New York City Marathon on the first Sunday in both May and November, respectively. They requested the bridges be closed for various extended periods of time between the hours of 8 a.m. and 5 p.m.

Traditionally, these bridge closures were accomplished each year by publishing a temporary final rule in the **Federal Register** with the bridge closures occurring at various times ranging from 8 a.m. through 5 p.m. The closure times were established to coincide with the race route through the city.

This proposed rule would make the traditional closures part of the permanent drawbridge operation regulations. New York City Department of Transportation would provide the exact dates and times for each bridge several weeks in advance of the race. Those dates and times would be published in the Local Notice to Mariners.

The Coast Guard believes this rule is reasonable because it would simplify the traditional bridge closure process. Additionally, the bridge closures are on Sundays when the bridges normally receive no requests to open.

##### **Discussion of Proposal**

This proposed change would amend 33 CFR 117.789 by revising paragraph (c), which identifies the operating schedule of the Willis Avenue Bridge, the Third Avenue Bridge, and the Madison Avenue Bridge. This proposed rule would also amend 33 CFR 117.801 by revising paragraph (g), which identifies the operating schedule for the Pulaski Bridge.

This proposed rule would allow the bridges to remain in the closed position for various extended periods of time between the hours of 8 a.m. and 5 p.m. on the first Sunday in both May and November to facilitate the running of the Five Borough Bike Tour and the New York City Marathon.

The Five Borough Bike Tour is run on the first Sunday in May. During this event the Third Avenue and Madison Avenue bridges, across the Harlem River, are usually closed from 8 a.m. to 12 p.m. and the Pulaski Bridge, across