

(c) \* \* \*

(1) The test instrument must have an effective audio-warning device, or a visual-warning device in the form of a screen tracing, that indicates when the test subject fails to hold his or her breath during the test. The test must be terminated and restarted from the beginning when the test subject fails

to hold his or her breath during the test. The test subject then may be refitted and retested.

\* \* \* \* \*

5. Controlled negative pressure (CNP) REDON quantitative fit testing protocol.

(a) When administering this protocol to test subjects, employers must comply with the requirements specified in paragraphs (a) and (c) of Part I.C.4 of this appendix ("Controlled negative pressure (CNP) quantitative fit

testing protocol"), as well as use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in paragraph (b) of Part I.C.4 of this appendix.

(b) Employers must ensure that each test subject being fit tested using this protocol follows the exercise and measurement procedures, including the order of administration, described below in Table A-1 of this appendix.

TABLE A-1.—CNP REDON QUANTITATIVE FIT TESTING PROTOCOL

Exercises <sup>1</sup>	Exercise procedure	Measurement procedure
Facing Forward .....	Stand and breathe normally, without talking, for 30 seconds .....	Face forward, while holding breath for 10 seconds.
Bending Over .....	Bend at the waist, as if going to touch his or her toes, for 30 seconds	Face parallel to the floor, while holding breath for 10 seconds
Head Shaking .....	For about three seconds, shake head back and forth vigorously several times while shouting.	Face forward, while holding breath for 10 seconds
REDON 1 .....	Remove the respirator mask, loosen all facepiece straps, and then redon the respirator mask.	Face forward, while holding breath for 10 seconds.
REDON 2 .....	Remove the respirator mask, loosen all facepiece straps, and then redon the respirator mask again.	Face forward, while holding breath for 10 seconds.

<sup>1</sup> Exercises are listed in the order in which they are to be administered.

(c) After completing the test exercises, the test administrator must question each test subject regarding the comfort of the respirator. When a test subject states that the respirator is unacceptable, the employer must ensure that the test administrator repeats the protocol using another respirator model.

(d) Employers must determine the overall fit factor for each test subject by calculating the harmonic mean of the fit testing exercises as follows:

$$\text{Overall Fit Factor} = \frac{N}{\left[ \frac{1}{FF_1} + \frac{1}{FF_2} + \dots + \frac{1}{FF_N} \right]}$$

Where:

N = The number of exercises;

FF<sub>1</sub> = The fit factor for the first exercise;

FF<sub>2</sub> = The fit factor for the second exercise; and

FF<sub>N</sub> = The fit factor for the nth exercise.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[CGD05-04-139]

RIN 1625-AA08

### Special Local Regulations for Marine Events; Manasquan River, Manasquan Inlet and Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the "Point Pleasant OPA/NJ Offshore Grand Prix", a marine event to be held on the waters of the Manasquan River, Manasquan Inlet and Atlantic Ocean between Point Pleasant Beach and Bay Head, New Jersey. 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 the regulated area during the event.

**DATES:** This rule is effective from 9:30 a.m. to 3:30 p.m. on August 13, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD05-04-139 and are available for inspection or copying at Commander (Aoax), 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:** S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, 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. Publishing an NPRM would be impracticable. The event will take place on August 13, 2004. There is not sufficient time to

allow for a notice and comment period, prior to the event. Immediate action is needed to protect the safety of life at sea from the danger posed by high-speed powerboats racing in a closed circuit.

Under 5 U.S.C. 553(d)(B)(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 affected waterway users via marine information broadcasts and area newspapers.

#### Background and Purpose

On August 13, 2004, the Offshore Performance Association and the New Jersey Offshore Racing Association will sponsor the "Point Pleasant OPA/NJ Offshore Grand Prix". The event will consist of approximately 35 offshore powerboats racing along an oval course on the waters of the Atlantic Ocean. A fleet of spectator vessels is expected to gather in the Atlantic Ocean near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

#### Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Manasquan

River, Manasquan Inlet and the Atlantic Ocean. The temporary special local regulations will be in effect from 9:30 a.m. until 3:30 p.m. on August 13, 2004. 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. The Patrol Commander will allow non-participants to transit the regulated area between races. These regulations are needed to control vessel traffic during the event to enhance the 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 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 temporary 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 Manasquan River, Manasquan Inlet and the Atlantic Ocean 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 and area newspapers so mariners can adjust their plans accordingly.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 the Manasquan River, Manasquan Inlet or Atlantic Ocean during the event.

This 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 9:30 a.m. to 3:30 p.m. on August 13, 2004. Vessel traffic will be allowed to pass through the regulated area between races when the Coast Guard Patrol Commander determines it safe to do so. 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 want to assist small entities in understanding this rule so that they can 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 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 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

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 concern 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 would not have a substantial and 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 M16475.1D, 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 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 § 100.35–T05–139 to read as follows:

#### § 100.35–T05–139: Manasquan River, Manasquan Inlet and Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ.

(a) *Regulated area.* The regulated area is established for the waters of the Manasquan River from the New York and Long Branch Railroad to New Manasquan Inlet, together with all waters of the Atlantic Ocean bounded by a line drawn from the end of the

South Manasquan Inlet Jetty, easterly to Manasquan Inlet Lighted Buoy “2M”, then southerly to a position at latitude 40°04’26” N, longitude 074°01’30” W, then westerly to the shoreline. 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 Group Atlantic City.

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

(3) *Sponsor* means an officer or agent of Offshore Performance Association, P.O. Box H385, Brick, NJ 08723.

(c) *Special local regulations.* (1) No person or vessel may enter or remain in the regulated area unless participating in the event or authorized by the sponsor or Official Patrol. The Patrol Commander may intermittently authorize general navigation to pass through the regulated area. Notice of these opportunities will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

(2) All persons or vessels not registered with the sponsor as participants or not part of the Official Patrol are considered spectators.

(3) The spectator fleet shall be held in a spectator anchorage area north of the regulated area, which shall be marked by sponsor provided patrol vessels flying pennants to aid in their identification.

(4) No spectator vessel shall proceed at a speed greater than six (6) knots while in the regulated area during the effective period.

(5) All persons and vessels shall comply with the instructions of the Official Patrol. The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed.

(d) *Effective period.* This section is effective from 9:30 a.m. to 3:30 p.m. on August 13, 2004.

Dated: July 26, 2004.

**Sally Brice-O'Hara,**

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

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 100

[CGD05–04–133]

RIN 1625–AA08

#### Special Local Regulations for Marine Events; Pamlico River, Washington, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the “SBIP—Fountain Powerboats Kilo Run and Super Boat Pro-Am Race”, a marine event to be held August 6 and August 8, 2004, on the waters of the Pamlico River, near Washington, North Carolina. 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 Pamlico River during the event.

**DATES:** This rule is effective from 6:30 a.m. on August 6, 2004 through 5 p.m. on August 9, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–133 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:** S. L. Phillips, 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. Publishing an NPRM would be impracticable. The event will begin on August 6, 2004. There is not sufficient time to allow for a notice and comment period prior to the event. Because of the danger posed by high-speed powerboats racing in a closed circuit, 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 these regulations in effect during the event.