



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2019-0137]**

**RIN 1625-AA08**

**Special Local Regulation; Breton Bay, McIntosh Run, Leonardtown, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish special local regulations for certain waters of Breton Bay and McIntosh Run. This action is necessary to provide for the safety of life on these navigable waters located at Leonardtown, MD, during a high-speed power boat demonstration event on October 5, 2019, and October 6, 2019. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0137 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Coast Guard Patrol Commander
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The Southern Maryland Boat Club of Leonardtown, MD, has notified the Coast Guard that it will be conducting the Southern Maryland Boat Club Bash on the Bay from 9 a.m. to 5 p.m. on October 5, 2019, and from 9 a.m. to 5 p.m. on October 6, 2019. The high-speed power boat event consists of approximately 50 participating Vintage & Historic race boats, including runabouts, v-bottoms, tunnel hulls and hydroplanes, 12 to 21 feet in length, participating in an exhibition with boats operating in heats along a marked racetrack-type course one mile in length and 150 feet in width, located in Breton Bay and McIntosh Run at Leonardtown, MD. The regatta is not a competition, but rather a demonstration of the vintage race craft. Hazards from the high-speed power boat demonstration event include participants operating within and adjacent to designated navigation channels and interfering with vessels intending to operate within those channels, as well as operating within approaches to local public boat landings. The Captain of the Port (COTP) Maryland-National Capital Region has determined that

potential hazards associated with the high-speed power boat event would be a safety concern for anyone intending to operate within certain waters of Breton Bay and McIntosh Run at Leonardtown, MD, operating in or near the event area.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on certain waters of Breton Bay and McIntosh Run before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041, which authorizes the Coast Guard to establish and define special local regulations.

### **III. Discussion of Proposed Rule**

The COTP Maryland-National Capital Region proposes to establish special local regulations to be enforced from 8 a.m. to 6 p.m. on October 5, 2019, and from 8 a.m. to 6 p.m. on October 6, 2019. The regulated area would cover all navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16'43" N. and bounded to the west by a line drawn along longitude 076°38'30" W., located at Leonardtown, MD.

This proposed rule provides additional information about areas within the regulated area, their definitions, and the restrictions that would apply. These areas include a "Course Area", "Buffer Zone", "Milling Area" and "Spectator Area". They lie within an area bounded to the east by a line drawn along latitude 38°16'43" N. and bounded to the west by a line drawn along longitude 076°38'30" W., located in Breton Bay and McIntosh Run, at Leonardtown, MD.

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event, scheduled from 9 a.m. until 5 p.m. on October 5, 2019, and October 6, 2019. The COTP and PATCOM would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Coast Guard Patrol Commander (PATCOM). If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Except for Southern Maryland Boat Club Bash on the Bay participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or PATCOM before entering the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF-FM channel 16. Vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so.

If permission is granted by the COTP or PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct spectator vessels while

within the regulated area. Vessels would be prohibited from loitering within the navigable channel. Only participant vessels and official patrol vessels would be allowed to enter the course area and milling area. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Spectators are only allowed inside the regulated area if they remain within a designated spectator area. All spectator vessels must be anchored or operate at a No Wake Speed within a designated spectator area. Official patrol vessels will direct spectator vessels to the spectator area. Spectators must contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and

pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration and time of year of the regulated area, which would impact a small designated area of Breton Bay and McIntosh Run for 20 total enforcement hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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 rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. 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 person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 20 hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*



The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a

final rule is published.

**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:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.501T05-0137 to read as follows:

§ 100.501T05-0137 Special Local Regulation; Breton Bay, McIntosh Run, Leonardtown, MD.

(a) Definitions. As used in this section:

Buffer Zone is a neutral area that surrounds the perimeter of the Course Area within the regulated area described by this section. The purpose of a buffer zone is to minimize potential collision conflicts with marine event participants and spectator vessels or nearby transiting vessels. This area provides separation between a Course Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Course Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a high-speed power boat demonstration area within the regulated area defined by this section.

Milling Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a milling area within the regulated area defined by this section. The area is used before a demonstration start to warm up the boats engines.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the Southern Maryland Boat Club Bash on the Bay or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(b) Locations. All coordinates reference Datum NAD 1983.

(1) Regulated area. All navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude  $38^{\circ}16'43''$  N. and bounded to the west by a line drawn along longitude  $076^{\circ}38'30''$  W., located at Leonardtown, MD. The following locations are within the regulated area:

(2) Course Area. The course area is a polygon in shape measuring approximately 940 yards in length by 228 yards in width. The area is bounded by a line commencing at position latitude  $38^{\circ}17'09.78''$  N., longitude  $076^{\circ}38'22.71''$  W.; thence southeasterly to latitude  $38^{\circ}16'58.62''$  N., longitude  $076^{\circ}37'50.91''$  W.; thence southwesterly to latitude  $38^{\circ}16'51.89''$  N., longitude  $076^{\circ}37'55.82''$  W.; thence northwesterly to latitude  $38^{\circ}17'05.44''$  N., longitude  $076^{\circ}38'27.20''$  W.; thence northeasterly terminating at point of origin.

(3) Buffer Zone. The buffer zone surrounds the entire course area described in the preceding paragraph of this section. This area is a polygon in shape and provides a buffer around the perimeter of the course area. The area is bounded by a line commencing at the shoreline west of Leonardtown Wharf Park at position latitude  $38^{\circ}17'13.80''$  N., longitude  $076^{\circ}38'24.72''$  W.; thence easterly to latitude  $38^{\circ}16'58.61''$  N., longitude  $076^{\circ}37'44.29''$  W.; thence southerly to latitude  $38^{\circ}16'46.35''$  N., longitude  $076^{\circ}37'52.54''$  W.; thence westerly to latitude  $38^{\circ}16'58.78''$  N., longitude  $076^{\circ}38'26.63''$  W.; thence northerly to latitude  $38^{\circ}17'07.50''$  N., longitude  $076^{\circ}38'30.00''$  W.; thence northeasterly terminating at point of origin.

(4) Milling Area. The milling area is a polygon in shape and is bounded by a line commencing at the shoreline east of Leonardtown Wharf Park at position latitude

38°17'10.07" N., longitude 076°38'14.87" W.; thence easterly and southerly along the shoreline to latitude 38°17'01.54" N., longitude 076°37'52.24" W.; thence westerly terminating at point of origin.

(5) Spectator Areas. (i) Northeast Spectator Fleet Area. The designated spectator area is bounded by a line commencing at position latitude 38°16'59.10" N., longitude 076°37'45.60" W., thence northeasterly to latitude 38°17'01.76" N., longitude 076°37'43.71" W., thence southeasterly to latitude 38°16'59.23" N., longitude 076°37'37.25" W., thence southwesterly to latitude 38°16'53.32" N., longitude 076°37'40.85" W., thence northwesterly to latitude 38°16'55.48" N., longitude 076°37'46.39" W., thence northeasterly to latitude 38°16'58.61" N., longitude 076°37'44.29" W., thence northwesterly to point of origin.

(ii) Southeast Spectator Fleet Area. The designated spectator area is bounded by a line commencing at position latitude 38°16'47.20" N., longitude 076°37'54.80" W., thence southerly to latitude 38°16'43.30" N., longitude 076°37'55.20" W., thence easterly to latitude 38°16'43.20" N., longitude 076°37'47.80" W., thence northerly to latitude 38°16'44.80" N., longitude 076°37'48.20" W., thence northwesterly to point of origin.

(iii) South Spectator Fleet Area. The designated spectator area is bounded by a line commencing at position latitude 38°16'55.36" N., longitude 076°38'17.26" W., thence southeasterly to latitude 38°16'50.39" N., longitude 076°38'03.69" W., thence southerly to latitude 38°16'48.87" N., longitude 076°38'03.68" W., thence northwesterly to latitude 38°16'53.82" N., longitude 076°38'17.28" W., thence northerly to point of origin.

(c) Special local regulations: (1) The COTP Maryland-National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area must immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator may enter a designated Spectator Area or must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-

National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(5) Only participant vessels and official patrol vessels are allowed to enter the course area and milling area.

(6) Spectators are only allowed inside the regulated area if they remain within the designated spectator area. All spectator vessels must be anchored or operate at a No Wake Speed within a designated spectator area. Official patrol vessels will direct spectator vessels to the spectator area. Spectators must contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) Enforcement officials. The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) Enforcement periods. This section will be enforced from 8 a.m. to 6 p.m. on October 5, 2019, and, from 8 a.m. to 6 p.m. on October 6, 2019.

Dated: March 12, 2019

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
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