



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2020- 0035]**

**RIN 1625-AA08**

**Special Local Regulation; East Passage, Narragansett Bay, RI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to amend an existing special local regulation for certain waters of the East Passage, Narragansett Bay, RI. This action is necessary to provide for the safety of life on these navigable waters near East Passage, Narragansett Bay, RI, during a sail boat race. This proposed rulemaking would prohibit persons and vessels from entering the special local regulation unless authorized by the Captain of the Port Sector Southeastern New England or a designated representative. 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-2020-0035 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 LT Arthur Fooks, Waterways Management Division, U.S. Coast Guard; telephone 401-435-2355, email D01-SMB-SectorSENE-Waterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Southeastern New England
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

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

On October 17, 2019, the Newport to Bermuda Race notified the Coast Guard that they would be conducting a sail boat race from 11 a.m. through 5 p.m. on June 19, 2020, with the potential make up dates being June 20, 2020 and June 21, 2020. The sail boat race will be launched from East Passage in Narragansett Bay south of Rose Island. The Captain of the Port Sector Southeastern New England (COTP) has determined that potential hazards associated with the sail boat race would be a safety concern for anyone attempting to transit within East Passage.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within East Passage before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231) and 46 U.S.C. 70041.

### III. Discussion of Proposed Rule

The COTP proposes to amend a special local regulation from 11 a.m. through 5 p.m. on June 19, 2020, with makeup dates being June 20, 2020, or June 21, 2020. The regulation found in 33 CFR 100.119 includes a regulated area for all waters of Narragansett Bay, Newport, RI, within the following points (NAD 83):

<b>Latitude</b>	<b>Longitude</b>
41°27'51" N	071°22'14" W
41°27'24" N	071°21'57" W
41°27'09" N	071°22'39" W
41°27'36" N	072°22'55" W

In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

<b>Latitude</b>	<b>Longitude</b>
41°26'04" N	071°22'16" W
41°25'36" N	071°21'58" W
41°25'45" N	071°22'40" W
41°25'49" N	071°22'56" W

The proposed amendment would be to expand the size of the first regulated area and to adjust the latitude and longitude of the second regulated area to encompass a new potential starting line for the race to accommodate for ideal weather parameters. The special local regulation would cover all navigable waters from an area just south of Rose Island expanding just past Castle Hill, RI, and also an area near Brenton Point. The proposed location of the special local regulation is as follows:

<b>Latitude</b>	<b>Longitude</b>
41°29'13" N	071°20'07" W
41°29'41" N	071°20'87" W
41°27'27" N	071°22'00" W
41°27'45" N	072°22'83" W

In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

<b>Latitude</b>	<b>Longitude</b>
41°26'06" N	071°22'27" W
41°25'60" N	071°21'97" W
41°25'36" N	071°22'65" W
41°25'82" N	071°22'93" W

The starting line will take place within one of the proposed regulated areas and will be decided prior to the race pending current weather conditions. The starting line box will be the restricted part of the waterway within the regulated area and that exact location will be broadcasted prior to the race start. The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled sail boat race. No vessel or person is permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or by phone at 508-457-3211. Persons and vessels permitted to enter this special local regulation must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative. The COTP or a designated representative will inform the

public through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the planned schedule. 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, location, duration and time-of-day of the special local regulation. We expect the adverse economic impact to this area to be minimal. Although this regulation may have adverse impact on the impact, the potential impact will be minimized for the following reasons: the special local regulation will be in effect for a maximum of 6 hours during the day of the event; vessels will only be restricted from the area in the East Passage of the Narragansett Bay during those limited periods when the races are actually on going; there is an alternate route, the

West Passage of Narragansett Bay, that does not add substantial transit time, is already routinely used by mariners, and will not be affected by this special local regulation. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners (BNMs) via VHF-FM marine channel 16 about the area, and the rule would allow vessels to seek permission to enter the area.

*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 special local regulation 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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 a special local regulation lasting approximately 6 hours that would prohibit entry within the regulated area. Such actions are categorically excluded from further review under paragraph L 61 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 submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

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

2. Revise § 100.119 to read as follows:

**§ 100.119 Special Local Regulation; East Passage, Narragansett Bay, RI.**

(a) *Regulated area.* (1) The regulated area includes all waters of Narragansett Bay, Newport, RI, within the following points (NAD 83):

**Table 1 to § 100.119**

<b>Latitude</b>	<b>Longitude</b>
41°29'13" N	071°20'07" W
41°29'41" N	071°20'87" W
41°27'27" N	071°22'00" W
41°27'45" N	072°22'83" W

(2) In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

**Table 2 to § 100.119**

<b>Latitude</b>	<b>Longitude</b>
41°26'06" N	071°22'27" W
41°25'60" N	071°21'97" W
41°25'36" N	071°22'65" W
41°25'82" N	071°22'93" W

(b) *Effective period.* This special local regulation is in effect biennially on a date and times published in the Local Notice to Mariners.

(c) *Special local regulations.* (1) Entry into this area is prohibited unless authorized by the Captain of the Port Sector Southeastern New England (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Southeastern New England.

(2) Persons or vessels seeking to enter the regulated area must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 508-457-3211.

(3) Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through local notice to mariners and Broadcast Notices to Mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: March 3, 2020

C. J. Glander  
Captain, U.S. Coast Guard,  
Captain of the Port Sector Southeastern New England  
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