

credit, the resulting carrybacks, or the net operating loss deduction, capital loss deduction, or investment credit allowable. If the required modification has not been made by the taxpayer and the Commissioner has the necessary information to make the modification within the 90-day period, the Commissioner may, in the Commissioner's discretion, make the modification. In determining the decrease, the Commissioner will not, for example, change the amount claimed on the return as a deduction for depreciation because the Commissioner believes that the taxpayer has claimed an excessive amount; and the Commissioner will not include in gross income any amount not so included by the taxpayer, even though the Commissioner believes that the amount is subject to tax and properly should be included in gross income.

(c) *Disallowance in whole or in part.* If the Commissioner finds that an application for a tentative carryback adjustment contains material omissions or errors of computation, the Commissioner may disallow the application in whole or in part without further action. If the Commissioner deems that any error of computation can be corrected within the 90-day period, the Commissioner may do so and allow the application in whole or in part. The Commissioner's determination as to whether the Commissioner can correct any error of computation within the 90-day period shall be conclusive. The Commissioner's action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer may, however, file a claim for credit or refund under section 6402, and may maintain a suit based on the claim if the claim is disallowed or if the Commissioner does not act upon the claim within 6 months from the date it is filed.

(d) *Application of decrease.* (1) Each decrease determined by the Commissioner in any previously determined tax that is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. The unpaid amount of tax may include one or more of the following:

\* \* \* \* \*

(ii) An amount the time for payment of which has been extended under section 6164 and which is due and payable on or after the date of the allowance of the decrease.

(iii) An amount (not including an amount the time for payment of which

has been extended under section 6164) which is due and payable on or after the date of the allowance of the decrease, including any assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances.

(2) If the unpaid amount of tax includes more than one unpaid amount, the Commissioner may determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in paragraphs (d)(1)(i) through (iii) of this section in the order named. If there are several amounts of the type described in paragraph (d)(1)(iii) of this section, any amount of the decrease that is to be applied against the amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is "the tax" and that the taxpayer had elected to pay the tax in installments. The unpaid amount of tax against which a decrease may be applied under paragraph (d)(1) of this section may not include any amount of tax for any taxable year other than the year of the decrease. After making the application, the Commissioner will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, or unused investment credit, the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after the application and credits may, within the 90-day period, in the discretion of the Commissioner, be credited against any tax liability or installment thereof then due from the taxpayer (including assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances), and, if not so credited, shall be refunded to the taxpayer within the 90-day period.

\* \* \* \* \*

**§ 1.6411-3T [Removed]**

■ **Par. 5.** Section 1.6411-3T is removed.

**Steven T. Miller,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: August 11, 2010.

**Michael Mundaca,**  
*Assistant Secretary of the Treasury (Tax Policy).*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG-2010-0756]

RIN 1625-AA08

**Special Local Regulation for Marine Events; Roanoke River, Plymouth, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations during the "East Coast Drag Boat Association Race", a power boat race to be held on the waters of the Roanoke River near Plymouth, 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 Roanoke River adjacent to Plymouth, North Carolina during the power boat race.

**DATES:** This rule is effective from 8 a.m. August 28, 2010 through 9 p.m. August 29, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0756 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0756 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Kevin Ouyoumjian, Prevention Department, Coast Guard Sector North Carolina; telephone (252) 247-4528, e-mail [Kevin.J.Ouyoumjian@uscg.mil](mailto:Kevin.J.Ouyoumjian@uscg.mil). If you

have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to minimize potential danger to the public during the event. The necessary information to determine whether the marine event poses a threat to persons and vessels was not provided with sufficient time to publish an NPRM. 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. The danger posed by drag boat racing makes special local regulations necessary to provide for the safety of spectator craft and other vessels transiting the event area. For these reasons, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

For the same reasons, the Coast Guard also finds, under 5 U.S.C. 553(d)(3), that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

##### **Basis and Purpose**

On August 28 and 29, 2010 the East Coast Drag Boat Association will sponsor the "U.S. Grand Nationals Drag Boat Races" on the waters of the Roanoke River near Plymouth, North Carolina. The event will consist of approximately 50 drag boats racing in heats along a quarter mile course at a high rate of speed. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of

participants, spectators and transiting vessels.

##### **Discussion of Rule**

The Coast Guard is establishing special local regulations on specified waters of the Roanoke River adjacent to Plymouth, North Carolina. The regulated area will cover a section of the Roanoke River bounded in width by each shoreline and approximately one mile long between approximate positions 35°52'27" N latitude, 076°44'39" W longitude and 35°51'55" N latitude, 076°45'27" W longitude. The rule will be enforced from 8 a.m. until 9 p.m. on August 28 and 29, 2010, and would restrict general navigation in the regulated area during the drag boat race. The Coast Guard, in its discretion and when practical, would allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel would be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the events to protect participants, spectators and transiting vessels.

##### **Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### **Regulatory Planning and Review**

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.

##### **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 the affected segment of the Roanoke River 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 8 a.m. to 9 p.m., each day, on August 28 and 29, 2010. 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 offer to assist small entities in understanding the 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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

##### **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 (adjusted for inflation) 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 cause 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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(h.), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area.

Under figure 2-1, paragraph (34)(h.), of the Instruction, an environmental analysis checklist 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.

■ 2. Add temporary § 100.35-T05-0756 to read as follows:

#### § 100.35-T05-0756 Roanoke River, Plymouth, North Carolina.

(a) *Regulated area.* The following is a regulated area: All waters of the Roanoke River, from surface to bottom, encompassed by lines commencing at the north river bank at latitude 35°52'27" N, longitude 076°44'39" W, thence 180 degrees due south across the river to the shoreline, thence west along the shoreline to a position located at latitude 35°51'55" N, longitude 076°45'27" W, thence 000 degrees due north across the river to the shoreline, thence east along the shoreline to the point of origin. 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 North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina 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 shall:

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

(ii) Proceed as directed by any official patrol.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 9 p.m. each day on August 28 and 29, 2010.

Dated: August 9, 2010.

**Anthony Popiel,**

*Captain, U.S. Coast Guard, Captain of the Port North Carolina.*

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2010-0234]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Taunton River, Fall River and Somerset, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard has changed the drawbridge operation regulations