

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 M16475.1D, 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 which 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 establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. 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 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 § 100.35T08-0168 to read as follows:

§ 100.35T08-0168 Special Local Regulation; Gulfport Lake; Gulfport, MS.

(a) *Regulated Area.* The following area is a regulated area: Gulfport Lake, Gulfport, MS to include all waters between an eastern boundary represented by positions 30°25'36" N, 089°03'08" W to 30°25'26" N, 089°03'08" W, and a western boundary represented by positions 30°25'32" N, 089°03'59" W to 30°25'26" N, 089°03'59" W.

(b) *Enforcement dates.* This rule will be enforced from 10 a.m. until 6 p.m. on May 5, 2012 and May 6, 2012.

(c) *Special Local Regulations.*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(2) All Persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port Mobile to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The patrol commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and vessels must remain moored through the duration of the event.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational Broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: March 27, 2012.

D.J. Rose,
Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 2012-9389 Filed 4-17-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0218]

RIN 1625-AA08

Special Local Regulation; Tuscaloosa Dragon Boat Race; Black Warrior River; Tuscaloosa, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for a portion of the Black Warrior River, from mile 340.5 to mile 341.0, Tuscaloosa, AL. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the Jr. League of Tuscaloosa Dragon Boat Races. Entry into, transiting or anchoring in this area is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective and enforceable with actual notice from 11 a.m. until 4 p.m. on April 28, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0218 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0218 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 and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251-441-5940 or email Lenell.J.Carson@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 there is insufficient time to publish a NPRM. The Coast Guard received an application for a Marine Event Permit on March 2, 2012 from the Junior League of Tuscaloosa to conduct their event on April 28, 2012. After reviewing the details of the event and the permit application, the Coast Guard determined that a special local regulation is needed and delaying or foregoing this safety measure would be contrary to the public interest. The special local regulation is needed to safeguard persons and vessels from safety hazards associated with the Jr. League of Tuscaloosa Dragon Boat Races. This event is advertised as scheduled and participants, sponsors and spectators have planned for the event. It would be impracticable and unnecessary to reschedule the planned and advertised event in order to complete the NPRM process.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days notice before the effective date after publication in the **Federal Register**. The Coast Guard received an application for a Marine Event Permit on March 2, 2012 from the Junior League of Tuscaloosa to conduct their event on April 28, 2012. Delaying the effective date would be impracticable and would unnecessarily delay the event. Immediate action is needed to protect persons and vessels from safety hazards associated with the Jr. League of Tuscaloosa Dragon Boat Races.

Basis and Purpose

The Junior League of Tuscaloosa is sponsoring a Dragon Boat Race on the Black Warrior River. The introduction of Dragon Boats into a commercially transited river system poses significant safety hazards to both the Dragon Boat racers and the commercial vessels. The COTP Mobile is establishing a temporary special local regulation for a portion of the Black Warrior River,

Tuscaloosa, AL, to safeguard persons and vessels during the Dragon Boat races.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this special local regulation is deemed necessary to safeguard life and property within the COTP Mobile zone.

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation for a portion of the Black Warrior River from mile 340.5 to mile 341.0, Tuscaloosa, AL. This temporary rule will safeguard life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the COTP Mobile or a designated representative. They may be contacted on VHF-FM Channel 16 or through Coast Guard Sector Mobile at 251-441-5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the special local regulation. This rule is effective from 11 a.m. until 4 p.m. on April 28, 2012.

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.

The special local regulation listed in this rule will only restrict vessel traffic from entering, transiting, or anchoring within a small portion of the Black Warrior River, Tuscaloosa, AL. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the regulated area; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through broadcast notice to mariners. These notifications will allow the public to plan operations around the regulated area.

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 or anchor in affected portions of the Black Warrior River, Tuscaloosa, AL during the Dragon Boat Races. This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the regulated area.

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 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 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 rule under that Order and determined that this rule does not have implications for federalism.

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.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect 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

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

Technical Standards

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 which 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 establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. 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 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 § 100.35T08–0218 to read as follows:

§ 100.35T08–0218 Special Local Regulation; Black Warrior River; Tuscaloosa, AL.

(a) *Regulated Area.* The following area is a regulated area: A portion of the Black Warrior River, from mile 340.5 to mile 341, Tuscaloosa, AL.

(b) *Enforcement dates.* This rule will be enforced from 11 a.m. until 4 p.m. on April 28, 2012.

(c) *Special Local Regulations.*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM”.

(2) All Persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port Mobile to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The patrol commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational Broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of

the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: March 27, 2012.

D.J. Rose,
Captain, U.S. Coast Guard, Captain of the
Port Mobile.

[FR Doc. 2012-9375 Filed 4-17-12; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 20

RIN 2900-AO43

Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Repeal of Prior Rule Change

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule.

SUMMARY: The Department of Veterans Affairs (VA) is taking final action to amend its hearing regulations to repeal a prior amendment that specified that the provisions regarding hearings before the Agency of Original Jurisdiction (AOJ) do not apply to hearings before the Board of Veterans' Appeals (Board). This action is being taken because of VA's decision that the prior amendment should have followed the notice-and-comment procedure of the Administrative Procedure Act (APA).

DATES: This rule is effective June 18, 2012, without further notice, unless VA receives a significant adverse comment by May 18, 2012. If adverse comment is received, VA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AO43—Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Repeal of Prior Rule Change." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment (this is not a toll-free number). In addition, during the comment period,

comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Laura H. Eskenazi, Principal Deputy Vice Chairman, Board of Veterans' Appeals (01C2), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-4603. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 23, 2011, VA issued a final rule, "Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Clarification," 76 FR 52572 (RIN 2900-AO06), revising VA's regulations to specify that the provisions governing hearings in 38 CFR 3.103 only apply to hearings conducted before the AOJ and that the provisions in part 20 govern hearings before the Board. The revision was made because of a decision by the United States Court of Appeals for Veterans Claims (Court) in *Bryant v. Shinseki*, 23 Vet. App. 488 (2010), which applied the provisions of § 3.103(c)(2) to a Board hearing. The *Bryant* Court held that the provisions of § 3.103(c)(2) require a "Board hearing officer" to "fully explain the issues still outstanding that are relevant and material to substantiating the claim" and to "suggest that a claimant submit evidence on an issue material to substantiating the claim when the record is missing any evidence on that issue or when the testimony at the hearing raises an issue for which there is no evidence in the record." *Id.* at 496-97.

RIN 2900-AO06, among other things, altered the language upon which the *Bryant* Court relied. VA has determined that RIN 2900-AO06 should have followed the notice-and-comment procedure of 5 U.S.C. 553(b) and (c) of the APA. Accordingly, in this direct-final rule, VA is repealing the amendments made by RIN 2900-AO06.

Based on the rationale set forth in this preamble, VA amends, in part 3, § 3.103(a) and (c)(1), and, in part 20, § 20.706 and Appendix A, to return the regulations to the language in effect before August 23, 2011.

Administrative Procedure Act

VA believes this rule is non-controversial, anticipates that this rule will not result in any significant adverse comment, and therefore is issuing it as a direct final rule.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would

be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the APA (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant comment unless the comment states why the rule would be ineffective without the additional change.

Under direct final rule procedures, if no significant adverse comment is received within the comment period, the rule will become effective on the date specified above. After the close of the comment period, VA will publish a document in the **Federal Register** indicating that no significant adverse comment was received and confirming the effective date of the rule.

However, if any significant adverse comment is received, VA will publish in the **Federal Register** a notice acknowledging receipt of a significant adverse comment and withdrawing the direct final rule. We will then publish in the **Federal Register** a proposed rule document, which will be substantially identical to this direct final rule and will serve as a proposal for the amendments in this direct final rule. Any comments received in response to the direct final rule will be treated as comments regarding the proposed rule. VA will consider such comments in developing a subsequent final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rulemaking will not directly affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.