

Dated: July 11, 2019.

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Alternate OSD Federal Register Liaison
Officer, Department of Defense.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0448]

RIN 1625-AA08

Special Local Regulation, Ohio River, Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Ohio River from mile 465.0 to mile 470.0 extending from bank to bank, on July 15, 2019. The special local regulation is necessary to provide for the safety of life on these navigable waters near Cincinnati, Ohio, during the BB Riverboat boat race. Entry of persons or vessels into this area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 3 p.m. through 5 p.m. on July 15, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0448 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Matthew Roberts, Marine Safety Detachment Cincinnati, OH; telephone 513-921-9033, matthew.d.roberts@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio
Valley
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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 good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This action is necessary to ensure the safety of life during the BB Riverboat race. It is impracticable to publish an NPRM because the Coast Guard must establish this special local regulation by July 15, 2019 and lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 after publication in the **Federal Register**. Delaying this rule would be contrary to public interest in ensuring the safety of spectators and vessels during the boat race because immediate action is necessary to prevent possible loss of life and property. Broadcast Notices to Mariners (BNM) and sharing information with the waterway users will update mariners of the restrictions, requirements and enforcement times during this temporary situation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the BB Riverboat race from 3 p.m. through 5 p.m. on July 15, 2019 will be a safety concern for all navigable waters of the Ohio River extending from mile marker 465.0 to mile 470.0 extending from bank to bank. The purpose of this rule is to ensure safety of life on the navigable waters in the regulated area before, during, and after the BB Riverboat race.

IV. Discussion of the Rule

The rule establishes a special local regulation from 3 p.m. through 5 p.m. on July 15, 2019 on the Ohio River in Cincinnati, Ohio from mile 465.0 to mile 470.0 extending from bank to bank. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled event. No vessel or person would be permitted to enter the area without obtaining permission from the COTP or a designated representative.

Deviation requests will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 1-800-253-7475 or can be reached by VHF-FM channel 16. Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this 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 rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule 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, and duration of the special local regulation. The special local regulation will only be in effect for two hours and covers an area of the waterway stretching five miles. The Coast Guard expects minimum adverse impact to mariners from the special local regulation activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP or a designated representative to transit the temporary 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 rule will 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 V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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. 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.

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.

C. Collection of Information

This rule will 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 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 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. If you

believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 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 determined 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 rule involves establishing a special local regulation on the Ohio River in Cincinnati, OH from mile 465.0 to mile 470.0 from 3:00 p.m. to 5:00 p.m. on July 15, 2019 extending from bank to bank. It is categorically excluded from further review under paragraph L[61] in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.

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.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SPECIAL LOCAL REGULATIONS/REGATTAS AND MARINE PARADES

■ 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.T08-0448 to read as follows:

§ 100.T08-0448 Special Local Regulation; Ohio River, Cincinnati, OH.

(a) *Location.* The Ohio River, from mile 465.0 to 470.0, extending bank to bank.

(b) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated personnel. Moreover, persons or vessels desiring to enter into or pass through the special local regulated area must request permission from the COTP Sector Ohio Valley or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465.

(2) Persons and vessels permitted to deviate from the special local regulated area requirements as well as enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP Sector Ohio Valley or a designated representative.

(c) *Enforcement period.* This special local regulation will be enforced from 3 p.m. through 5 p.m. on July 15, 2019.

(d) *Informational Broadcasts.* The COTP Sector Ohio Valley 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 dates and times of enforcement.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

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