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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0030]

RIN 1625-AA08

Special Local Regulation; Moss Point Rockin' the Riverfront Festival; O'Leary Lake; Moss Point, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for a portion of O'Leary Lake, Moss Point, MS, on April 28-29, 2012. This action is necessary for the safeguarding of participants and spectators, including crews, vessels, and persons on navigable waters during the Moss Point Rockin' the Riverfront Festival high speed boat races. Entry into, transiting in 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 from 11:00 a.m. on April 28, 2012, until 4:00 p.m. on April 29, 2012.

ADDRESSES: Documents indicated in this preamble as being

available in the docket are part of docket USCG-2012-0030 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0030 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 8:00 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 e-mail LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251-441-5940 or e-mail 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) or providing a comment period with respect to this rule. The Coast Guard received an application for a Marine Event Permit on December 23, 2011 from the Moss Point Main Street Association to conduct a high speed boat race. After reviewing the details of the event and the permit application, the Coast Guard determined that a special local regulation is needed. Delaying or foregoing this safety measure to provide a comment period would be contrary to the public interest. The special local regulation is needed to safeguard persons and vessels from safety hazards associated with the Moss Point Rockin' the Riverfront Festival high speed boat races. The Coast Guard believes that the public's desire to have the race at the scheduled time is greater than the imposition on navigation which this regulation will impose, and that the public interest favors enacting this regulation without publishing an NPRM.

Basis and Purpose

The Moss Point Main Street Association applied for a Marine Event Permit to conduct a high speed boat race on O'Leary Lake, Moss Point, MS on April 28-29, 2012. This event will draw in a large number of pleasure craft and the high speed boats pose a significant safety hazard to both vessels and mariners operating in or near the area. The COTP Mobile is establishing a temporary

special local regulation for a portion of O'Leary Lake, Moss Point, MS, to safeguard persons and vessels during the high speed boat races.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this special local regulation is deemed necessary for the safeguard of 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 O'Leary Lake, Moss Point, MS, enclosed by a bounded area starting at a point on the shore at approximately 30° 25' 11.0" N, 088 32' 24.4" W, then east to 30° 25' 12.9" N, 088 32' 18.0" W, then south to 30° 24' 50.9" N, 088 32' 09.6" W, then west following the shore line back to the starting point at 30° 25' 11.0" N, 088 32' 24.4" W. This temporary rule will safeguard life and property in this area. Entry into, transiting in 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 11:00 a.m. until 4:00 p.m. on April 28-29, 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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The special local regulation listed in this rule will only restrict vessel traffic from entering, transiting, or anchoring within a small portion of O'Leary Lake, Moss Point, MS. 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

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. However, when an agency is not required to publish an NPRM for a rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. The Coast Guard was not required to publish an NPRM for this rule for the reasons stated in the section titled "Regulatory Information" and therefore is not required to publish a regulatory flexibility analysis.

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 O'Leary Lake during the high speed 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 (Public Law 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 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 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

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 M16475.1D, 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 § 100.35T08-0030 to read as follows:

§ 100.35T08-0030 Special Local Regulation; O'Leary Lake; Moss Point, MS.

(a) Regulated Area. The following area is a regulated area: a portion of O'Leary Lake, Moss Point, MS, enclosed by a bounded area starting at a point on the shore at approximately 30° 25' 11.0" N, 088 32' 24.4" W, then east to 30° 25' 12.9" N, 088 32' 18.0" W, then south to 30° 24' 50.9" N, 088 32' 09.6" W, then west following the shore line back to the starting point at 30° 25' 11.0" N, 088 32' 24.4" W.

(b) Enforcement dates. This rule will be enforced from 11:00 a.m. until 4:00 p.m. on April 28-29, 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: February 8, 2012

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

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