



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-0238]

RIN 1625-AA08

Special Local Regulation; Ohio River MM 598-602.7, Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for all navigable waters of the Ohio River miles 598-602.7. This action is necessary to provide for the safety of life on these navigable waters near Louisville, KY, during the Thunder over Louisville Air Show and Fireworks Display. This regulation prohibits vessels from anchoring within the navigation channel and along the left descending bank of the Ohio River from mile 598 to 602.7 as well as establishes a buffer area restricting transit to slowest safe speed creating minimum wake from mile 598 to 602.7.

DATES: This rule is effective beginning at 11 a.m. on April 22, 2017 through 2 a.m. on April 23, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0238 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 Caloeb Gandy. U.S. Coast Guard Sector Ohio Valley, telephone 502-779-5334, email caloeb.l.gandy@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
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

Thunder over Louisville is an annually recurring marine event located on the Ohio River in Louisville, KY. This year’s event will be taking place on April 21, 22, and 23, 2017. The event sponsor will be organizing an air show and conducting a fireworks display launched from multiple barges on the Ohio River spanning mile marker 602 to 606.

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 that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because conducting a large scale air show over navigable waters and multiple fireworks displays on navigable waters paired with the large number of spectator vessels expected and other

waterway users in the area poses heightened safety hazards. Immediate action is necessary to establish event specific regulations. This Special Regulation for Thunder over Louisville is being updated in Sector Ohio Valley's 2017 update to its published annually recurring marine events. However, that regulation was not completed in time and therefore a TFR is now required. It is impracticable to publish a new NPRM because the Coast Guard must establish this rule by April 22, 2017.

We are issuing this rule, and under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. The COTP has deemed that a safety risk exists due to the large number of spectator vessels within close proximity to the large scale air show and fireworks display. Providing a full 30 days notice is unnecessary and contrary to the public interest as it would delay the effectiveness of the temporary special local regulation until after the event. The Coast Guard will provide actual notice to the public and maritime community that the temporary special local regulation will be in effect and of the enforcement period via broadcast notices to mariners.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the large number of recreational vessels in the area during the event will be a safety concern for anyone navigating the Ohio River from mile marker 598-602.7. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary regulated area before, during, and after Thunder over Louisville.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes a temporary special local regulation from 11 a.m. on April 22, 2017 through 2 a.m. on April 23, 2017. The temporary special local regulation will cover all navigable waters of the Ohio River from mile marker 598-602.7. 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 air show and fireworks displays. Vessels operating within the regulated area are required to maintain the slowest speed possible to maintain maneuverability creating minimum wake. In addition, vessels will not be permitted to anchor within the navigation channel or along the left descending bank of the Ohio River from mile 600 to 602.7.

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

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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 including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior

regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Recreational vessel traffic will be able to transit this area at a minimum wake speed, or the slowest speed possible to maintain maneuverability. In addition, recreational vessels are permitted to anchor outside the navigation channel along the right descending bank from mile 600 to 602.7. The Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the temporary special local regulation that is in place.

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 special local regulation, 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 (Public Law 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.

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 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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 a special local regulation lasting less than 24 hours that restricts anchorage areas and the speed of vessels transiting the area to a no wake speed. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. A preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the ADDRESSES section of this preamble.

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 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.T08-0238 to read as follows:

§ 100.T08-0238 Special Local Regulation; Ohio River MM 598.0-602.7,

Louisville, KY.

(a) Special local regulated area. The following area is a temporary special local regulation for all navigable waters of the Ohio River between mile 598.0 and mile 602.7 Louisville, KY, extending the entire width of the Ohio River.

(b) Effective dates. This special local regulation is effective from 11 a.m. on April 22, 2017 through 2 a.m. on April 23, 2017.

(c) Special local regulations. (1) Vessels transiting the regulated area from mm 598-602.7 must do so at the slowest safe speed creating minimum wake.

(2) Vessels are not permitted to anchor within the navigation channel or along the left descending bank between mile 600 and mile 602.7.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted via VHF-FM radio channel 16 or by phone at 502-587-8633.

(4) 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.

(5) 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.

(d) Informational broadcasts. The COTP Ohio Valley 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: April 13, 2017.

M. B. Zamperini,
Captain, U.S. Coast Guard,
Captain of the Port Ohio Valley.

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