



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0329]

RIN 1625-AA08

Special Local Regulation; Ohio River, Portsmouth, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Special Local Regulation on the Ohio River. This action is necessary to provide for safety of life on the Ohio River from mile marker 355.5 to mile marker 356.8 during a regatta from August 31, 2019 through September 2, 2019. This proposed rulemaking would restrict access to this portion of the river unless otherwise authorized by the Captain of the Port Sector Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0329 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST3 Cornelius, MSU Huntington, U.S. Coast Guard; 304-733-0198, Wesley.p.cornelius@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, Purpose, and Legal Basis

The Breakwater Powerboat Association submitted an application to Coast Guard Sector Ohio Valley for a marine event permit to conduct a power boat race from August 31, 2019 through September 02, 2019. This race will be the National Championship for two classes of powerboats. The race course will be the area from Ohio River Mile Marker (MM) 355.5 to MM 356.8. Hazards from the regatta include collision of vessels, wake, capsizing, and interference to Aids to Navigation. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the regatta would be a safety concern for anyone within the race course area.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the race course before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under the authority in 46 U.S.C. 70041 (previously 33 U.S.C 1233)

III. Discussion of Proposed Rule

The COTP is proposing to establish a Special Local Regulation from August 31,

2019 through September 02, 2019. The special local regulation would cover all navigable waters from Ohio River Mile Marker (MM) 355.5 to MM 356.8. The duration of the regulation is intended to ensure the safety of vessels and these navigable water before, during, and after the scheduled regatta. No person would be permitted to enter the area without obtaining approval from the Captain of the Port or a designated representative. The event sponsor has scheduled commercial traffic breaks to prevent a back-up of vessels. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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.

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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 size, location, and duration of the special local regulation. The safety zone will be enforced on a small area of the Ohio River from 9 a.m. through 6 p.m. on August 31, 2019, from 7 a.m. through 5:30 p.m. on September 1, 2019, and from 7 a.m. through 4 p.m. on September 2, 2019. Breaks have

been scheduled so that the event does not significantly impede commercial traffic. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule would allow vessels to seek permission to enter or transit the zone.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owner or operators of vessels intending to transit the area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination 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 proposed rule involves a special local regulation lasting from August 31, to September 02, 2019 that would restrict entry into the race course from MM 355.5 to MM 356.8. Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 is proposing to amend part 100 as follows:

PART 100— SAFETY OF LIFE ON THE NAVIGABLE WATERS

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.T08-0329 to read as follows:

§ 100.T08-0329 Special Local Regulation; Ohio River, Portsmouth, OH.

(a) *Location.* All navigable waters of the Ohio River from mile marker (MM) 355.5 to MM 356.8 Portsmouth, OH.

(b) *Effective period.* This section is effective from August 31, 2019 through September 2, 2019.

(c) *Enforcement period.* The section will be enforced from 9 a.m. through 6 p.m. on August 31, 2019, from 7 a.m. through 5:30 p.m. on September 1, and from 7 a.m. through 4 p.m. on September 2, 2019.

(d) *Special local regulations.* (1) Entry into this area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

(2) Recreational vessels are permitted to transit the regulated area during scheduled breaks for commercial traffic. There shall be no anchoring or loitering in the navigation channel. Recreational vessels transiting into and away from this area are restricted to the slowest safe speed creating minimum wake.

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

(4) All persons or vessels desiring entry into or passage through the area must request permission from the COTP or a designated representative. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

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

[FR Doc. 2019-17415 Filed: 8/14/2019 8:45 am; Publication Date: 8/15/2019]