



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0158]

RIN 1625-AA08

Special Local Regulation; Ohio River, Lawrenceburg, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a special local regulation for all waters of the Ohio River, surface to bottom, extending from Ohio River mile 492.0 to 495.5 at Lawrenceburg, IN, June 18, 2016 with an alternate date of June 19, 2016. This special local regulation is necessary to provide for the safety of life on these navigable waters near Lawrenceburg, IN, during a high-speed boat race on June 18, 2016. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port 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 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0158 using the Federal eRulemaking Portal at <http://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 Petty Officer Andrew Prescott, Sector Ohio Valley, U.S. Coast Guard; telephone 502-779-5334, email Andrew.J.Prescott@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On January 29, 2016, the Breakwater Powerboat Association notified the Coast Guard that it will be sponsoring a high-speed boat race from 7:30 a.m. to 6:30 p.m. on June 18, 2016. Alternate time and date will be from 10:00 a.m. to 2:00 p.m. June 19, 2016. The boat race will take place at Ohio River mile 492.0 to 495.5 in the vicinity of Lawrenceburg, IN. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with a high-speed regatta would be a safety concern for anyone within in the regulated area.

The purpose of this rulemaking is to ensure the safety of vessels, spectators and the navigable waters within the regulated area before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The COTP proposes to establish a special local regulation from 7:30 a.m. to 6:30 p.m. on June 18, 2016. The special local regulation would cover all navigable waters of the Ohio River from mile 492.0 to 495.5 in Lawrenceburg, IN. The duration of the regulated area is intended to ensure the safety of vessels, spectators and these navigable waters before, during, and after the scheduled high-speed regatta. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. 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 (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

#### **A. Regulatory Planning and Review**

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulated area, and the rule would allow vessels to seek permission to enter the regulated 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 proposed rule would 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 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 (Pub. L. 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 E.O. 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 E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 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 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 proposed rule would not result in such 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 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 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 less than 12 hours that would prohibit entry within the regulated area. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## 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.

## **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 <http://www.regulations.gov>. If your material cannot be submitted using <http://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 <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://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, and Waterways

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 temporary § 100.35T08-0158 to read as follows:

§ 100.35T08-0158 Special Local Regulation; Ohio River Mile 492.0 to 495.5, Lawrenceburg, IN.

(a) Location. All waters of the Ohio River beginning at mile marker 492.0 and ending at mile marker 495.5 at Lawrenceburg, IN.

(b) Periods of Enforcement. This rule will be enforced from 7:30 a.m. to 6:30 p.m. on June 18, 2016, unless the event is delayed due to weather. If delayed, it will be enforced from 10:00 a.m. to 2:00 p.m. June 19, 2016. The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the special local regulation.

(c) Regulations. (1) In accordance with the general regulations in §100.801 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley 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.

Dated: April 29, 2016

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R. V. TIMME  
Captain, U. S. Coast Guard  
Captain of the Port Ohio Valley

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