



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2017-0189]**

**RIN 1625-AA08**

**Special Local Regulation; Lake Ferguson; Greenville, MS**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final Rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation controlling movement of vessels for certain waters of Lake Ferguson, Greenville, MS. This rule is necessary to provide for the safety of life on navigable waters during a paddling event on April 22, 2017. This regulation prohibits entry by all vessels, mariners, and persons into the event area, an approximate 300-yard stretch of Lake Ferguson extending approximately 150-yards west from the Greenville boat launch. All vessels transiting Lake Ferguson west-northwest of the regulated area will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the Captain of the Port Memphis or an on-scene representative.

**DATES:** This rule is effective from 8 a.m. until 4 p.m. on April 22, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0189 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 about this rule, call or email Petty Officer Todd Manow, Waterways Management, Sector Lower Mississippi River, U.S. Coast Guard, telephone 901-521-4813, email Todd.M.Manow@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
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 Information and Regulatory History**

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) with respect to this rule because doing so would be impracticable. The Greater Greenville Development Foundation did not notify the Coast Guard that it will be sponsoring the “Delta Dragon Boat Race” on April 22, 2017 with sufficient time remaining to publish an NPRM. It is impracticable to publish an NPRM because we must establish this safety zone 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 this temporary rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

### **III. Legal Authority and Need for a Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The COTP has determined that potential hazards posed to participants of a rowing regatta in Lake Ferguson would be a safety concern for anyone transiting this waterway in the vicinity of the Greenville boat launch in Greenville, Mississippi. The purpose of this rulemaking is to ensure the safety of event participants and other waterway users before, during, and after the scheduled event in the navigable waters of Lake Ferguson.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation, enforced from 8 a.m. until 4 p.m. on April 22, 2017. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following in Lake Ferguson in the vicinity of Greenville, MS: starting from a point on shore at 33°24.83'N, 091°03.95'W, proceeding 150 yards west-northwest into the lake at 33°24.88'N, 091°04.02'W, then proceeding approximately 390 yards south-southwest to 33°24.71'N, 091°04.15'W, then proceeding 160 yards east-southeast to a point on shore at 33°24.67'N, 091°04.07'W, before returning north-northeast along the shoreline to the point of origin.

This regulation prohibits entry by all vessels, mariners, and persons into the event area, an approximate 300-yard stretch of Lake Ferguson extending approximately 150-yards west-northwest from the Greenville boat launch. All vessels transiting Lake

Ferguson through the spectator zone, west-northwest of the regulated area to the state line, will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the Captain of the Port Memphis or an on-scene representative.

## **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).

The Coast Guard's use of this special local regulation will be only eight hours in duration on a Saturday in April, and it is designed to minimize the impact on navigation. Moreover, vessels will be allowed to transit Lake Ferguson west-northwest of the event area at the slowest speed for safe navigation to minimize wake. Overall, the Coast Guard expects minimal impact to vessel movement from the enforcement of this special local regulation.

#### 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.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of Lake Ferguson in the vicinity of Greenville, MS between 8 a.m. and 4 p.m. on April 22, 2017.

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 will 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 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 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 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 rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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 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 rule involves the establishment of a special local regulation lasting eight hours on a Saturday in April. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An 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 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.

## **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 § 100.35T08-0189 to read as follows:

#### **§ 100.35T08-0189 Special Local Regulation; Lake Ferguson, Greenville, MS.**

(a) Regulated area. (1) A regulated area is established to encompass all waters of Lake Ferguson, in the vicinity of the Greenville Boat Launch, within an area starting from a point on shore at 33°24.83'N, 091°03.95'W, proceeding approximately 150 yards WNW into the lake at 33°24.88'N, 091°04.02W, then proceeding approximately 390 yards SSW to 33°24.71'N, 091°04.15'W, then proceeding 160 yards ESE to a point on shore at 33°24.67'N, 091°04.07'W, before returning NNE along the shoreline to the point of origin.

(2) A spectator zone will be established in Lake Ferguson, west-northwest of the regulated area to the state line.

(b) Effective period. This section is effective and will be enforced from 8 a.m. until 4 p.m. on April 22, 2017.

(c) Regulations. (1) In accordance with the general regulations in § 100.801 of this part, all vessels, mariners, and persons are prohibited from entering the event area,

without permission of the Captain of the Port Memphis (COTP) or an on-scene representative. All vessel operators desiring to operate in the event area of this special local regulation must contact the COTP or an on-scene representative to request permission to do so. The COTP or may be contacted via VHF Channel 16 or by telephone at 1-866-777-2784. An on-scene representative may be a commissioned, warrant, or petty officer of the United States Coast Guard or a federal, state or local law enforcement officer.

(2) During enforcement, all Vessels transiting Lake Ferguson through the spectator zone will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the COTP or an on-scene representative.

(d) Informational broadcasts. The COTP will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the dates and times of enforcement.

Dated: March 31, 2017

T. J. WENDT  
Captain, U.S. Coast Guard  
Captain of the Port  
Memphis, Tennessee  
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