



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2018-0307]**

**RIN 1625-AA08**

**Special Local Regulation; Lake of the Ozarks, Bagnell, MO**

**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 Osage arm of the Lake of the Ozarks from mile marker (MM) 0.0 to MM 0.4 in Bagnell, MO. This special local regulation is necessary to protect the public, participants, spectators, and the marine environment from potential hazards during the Lake Race 2018. Entry of persons or vessels into this regulated area is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

**DATES:** This rule is effective from 7 a.m. through 6 p.m. on June 2, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0307 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 LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314-269-2568, email Sean.M.Peterson@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile marker
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 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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This special local regulation must be established by June 2, 2018 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the special local regulation until after the scheduled date of the power boat race and compromise public safety.

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*. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to ensure the safety the public, participants, spectators, and the marine environment during the power boat race.

### **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 Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the Lake Race 2018 occurring on June 2, 2018 will be a safety concern for persons and vessels within four tenths of a mile stretch of the Osage arm of the Lake of the Ozarks. The purpose of this rule is to ensure safety of the public, participants, spectators, and the marine environment in the regulated area before, during, and after the Lake Race 2018.

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

This rule establishes a temporary special local regulation from 7 a.m. through 6 p.m. on June 2, 2018 on all navigable waters of the Osage arm of the Lake of the Ozarks from mile marker (MM) 0.0 to MM 0.4 in Bagnell, MO. The duration of the special local regulation is intended to protect the public from the power boat race before, during, and after the event. No vessel or person is permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

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 COTP or a designated representative to patrol the regulated area.

Spectator vessels desiring to enter, transit through or within, or exit the regulated area may do so only with permission from the COTP or a designated representative, and when permitted, must operate at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels. No spectator vessel 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. 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.

The COTP or a designated representative 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.

The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

## **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*

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 rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule 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 the size, location, duration, and time-of-day for the special local regulation. This special local regulation cover a less than half-mile stretch of the arm of the Osage arm of the Lake of the Ozarks for eleven hours on one day. Moreover, the Coast Guard will issue BNMs via VHF-FM marine channel 16 about the regulation so that waterway users may plan accordingly for transits during

this restriction, and the rule allows vessels to seek permission from the COTP or a designated representative 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 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 regulated area 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 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 rule will not result in such an 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 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 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 eleven hours on a four-tenths of a mile stretch of the Osage arm of the Lake of the Ozarks. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### 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; 33 CFR 1.05-1.

2. Add § 100.35T08-0307 to read as follows:

§ 100.35T08-0307 Special Local Regulation; Lake of the Ozarks, Bagnell, MO.

(a) Location. The following area is a special local regulation: all navigable waters of the Osage arm of the Lake of the Ozarks from mile marker (MM) 0.0 to MM 0.4 in Bagnell, MO.

(b) Effective period. This section is effective from 7 a.m. through 6 p.m. on June 2, 2018.

(c) Regulations. (1) In accordance with the general regulations in § 100.35, entry into this regulated area is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM 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 COTP or a designated representative to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with

prior approval of the COTP or a designated representative and when so directed by that officer 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 vessel 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) Spectator vessels 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.

(6) The COTP or a designated representative 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.

(7) The COTP or a designated representative 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 COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(d) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

Dated: May 25, 2018

STOERMER, SCOTT A.

Captain, U.S. Coast Guard,

Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2018-11774 Filed: 5/31/2018 8:45 am; Publication Date: 6/1/2018]