



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2018-0821]

RIN 1625-AA08

Special Local Regulation; Upper Mississippi River, St. Paul, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the navigable waters of the Upper Mississippi River from Mile Marker (MM) 846 to MM 847. The special local regulation is necessary to protect event participants, spectators, and vessels transiting the area from potential hazards during the WCCO-TV Pulling Together marine event. Entry of vessels or persons into the regulated area is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective from 10 a.m. through 5 p.m. on September 8, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0821 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 Chief Petty Officer Joshua Wilson, Sector Upper Mississippi River,

Waterways Management Division, U.S. Coast Guard; telephone 314-269-2548, email Joshua.A.Wilson@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>
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 would be impracticable. This rule must be established by September 8, 2018 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay the establishment of the temporary special local regulation until after the scheduled date of the event, which would compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*.

Delaying the effective date of this rule would be contrary to the public interest because immediate action is necessary to ensure the safety of event participants, and persons and vessels transiting the regulated area.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that there are potential hazards associated with the WCCO-TV Pulling Together event consisting of a tug of war competition between teams on opposing banks of the Upper Mississippi River between Mile Marker (MM) 846 and MM 847. This event will span the entire width of the river, potentially causing an extra or unusual hazard to the safety of life on the navigable waters of the United States. This rule is necessary to protect event participants, and persons and vessels transiting the regulated area during the event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation during the WCCO-TV Pulling Together event from 10 a.m. until 5 p.m. on September 8, 2018, or until cancelled by the COTP, whichever occurs first. The regulated area will cover all navigable waters of the Upper Mississippi River from MM 846 to MM 847. This special local regulation is intended to protect the public from potential navigation hazards during the event. No person or vessel 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). If established, the PATCOM may be contacted on VHF-FM Channel 16 by using the call sign "PATCOM". The COTP or designated representative may be contacted by phone at 314-269-2332 or VHF-FM Channel 16.

All persons and vessels not registered with the event sponsor as sponsors or official patrol vessels are considered “spectators”. The “official patrol vessels” consist of any Coast Guard, State and local law enforcement, and sponsor provided vessels assigned or approved by the COTP 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 by the COTP or a designated representative, must operate at a minimum safe navigation speed in a manner which will not endanger event participants or other persons or vessels within the regulated area.

No spectator vessel shall anchor, block, loiter, or impede the through transit of event participant 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.

The COTP or designated representative may forbid and control the movement of any and 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, a citation for failure to comply, or both.

The COTP or 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 the enforcement of the temporary special local regulation at the conclusion of the event.

The COTP or a designated representative will inform the public of the enforcement times and the establishment of a PATCOM for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Safety Marine Information Bulletins (SMIBs), 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 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and 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). Executive Order 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, 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 "Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017). This regulatory action determination is based on the size, location, and duration for the temporary special local regulation. The regulated area will be enforced on a one-mile stretch of the Upper Mississippi River for a period of up to seven hours on one day. Vessel traffic may request to transit the regulated area by contacting the COTP or a designated representative. Moreover, the COTP or a designated representative will publish details of the regulated area in LNMs and will issue BNMs via VHF-FM Channel 16 to allow waterways users to plan accordingly.

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 the establishment of a temporary special local regulation that will restrict access on a one-mile stretch of the Upper Mississippi River for seven hours on one day. 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. Because this rulemaking is to

establish a temporary special local regulation for a permitted marine event that is not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, State, or local government a Record of Environmental Consideration (REC) is not required. Should any detail of this rule change to such an extent that will require a REC, a REC will be available in the docket 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

Maritime 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.T08-0821 to read as follows:

§ 100.T08-0821 Special Local Regulation; Upper Mississippi River, St. Paul,

MN.

- (a) Location. A temporary special local regulation is established for the

following area: all navigable waters of the Upper Mississippi River from Mile Marker (MM) 846 to MM 847, extending the entire width of the river.

(b) Effective period. This section will be enforced from 10 a.m. through 5 p.m. on September 8, 2018, or until cancelled by the COTP, whichever occurs first

(c) Regulations. (1) In accordance with the general regulations in § 100.35 of this part, entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River. A designated representative may be a Patrol Commander (PATCOM). If established, the PATCOM may be contacted on VHF-FM Channel 16 by using the call sign "PATCOM". The COTP or designated representative may be contacted by phone at 314-269-2332 or VHF-FM Channel 16.

(2) All persons and vessels not registered with the event sponsor as sponsors or official patrol vessels are considered "spectators". The "official patrol vessels" consist of any Coast Guard, State and local law enforcement, and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

(3) 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 by the COTP or a designated representative, must operate at a minimum safe navigation speed in a manner which will not endanger event participants or other persons or vessels within the regulated area.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of event participant 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) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel.

(6) The COTP or designated representative may forbid and control the movement of any and 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, a citation for failure to comply, or both.

(7) The COTP or 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 the enforcement of the temporary special local regulation at the conclusion of the event.

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

Dated: September 4, 2018

R. M. SCOTT,

Commander, U.S. Coast Guard,

Acting Captain of the Port Sector Upper Mississippi River.

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