



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

Docket Number USCG-2019-0681

RIN 1625-AA08

Special Local Regulation; Tennessee River, Florence, AL

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 Tennessee River, extending the entire width of the river, from mile marker (MM) 254.0 to 258.0. This action is necessary to provide for the safety of life on these navigable waters near Florence, AL, during a Triathlon on September 22, 2019. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 6 a.m. through 9 a.m. on September 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0681 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 Petty Officer Third Class Benjamin Gardner, MSD Nashville, U.S. Coast Guard; telephone 615-736-5421, email MSDNashville@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Ohio Valley
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)(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 impractical. It would be impracticable to publish an NPRM because we must establish the Special Local Regulation by September 22, 2019 and lack sufficient time to request and respond to comments within a reasonable time.

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 needed to establish a Special Local Regulation associated with the Renaissance Man Triathlon by September 22, 2019.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the Renaissance Man Triathlon will be a safety concern for participants. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the Special Local Regulation zone during this time period.

IV. Discussion of the Rule

This rule establishes a Special Local Regulation from 6 a.m. through 9 a.m. on September 22, 2019. The Special Local Regulation will cover all navigable waters from MM. 254.0-258.0 being used by participants in the Renaissance Man Triathlon. The duration of the regulated area is intended to protect personnel, vessels, and the marine environment in these navigable waters while the swim event is taking place. No vessel or person will be permitted to enter the special local regulation without obtaining permission from the COTP or a designated 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

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, and duration of the marine event. The Special Local Regulation will only impact four miles of the Tennessee River for three hours on one day.

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 special local regulation 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 Environmental Planning COMDTINST 5090.1 (series), 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 only 3 hours that will prohibit entry on the Tennessee River from mile marker 254.0-258.0.

It is categorically excluded from further review under paragraph L61 in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Memorandum for the Record 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 record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100 – SPECIAL LOCAL REGULATIONS/REGATTAS AND MARINE PARADES

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 temporary § 100.T08-0681 to read as follows:

§ 100T08-0681 Special Local Regulation; Tennessee River, Florence Alabama.

(a) Location. The Tennessee River from 254.0 to 258.0 extending from bank to bank within the river.

b) Periods of enforcement. This Special Local Regulation will be enforced from 6:00 a.m. to 9:00 a.m. on September 22, 2019.

(c) Regulations. (1) In accordance with the general regulations in §100.35 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated personnel. Moreover, persons or vessels desiring to enter into or pass through the special local regulated area must request permission from the COTP Sector Ohio Valley or a designated representative. They may

be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465.

(2) Persons and vessels permitted to deviate from the special local regulated area requirements as well as enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP Sector Ohio Valley or a designated representative.

d) Informational broadcasts. The COTP Sector Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation, as well as any changes in the dates and times of enforcement.

Dated: September 4, 2019.

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

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