



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2023-0717]

RIN 1625-AA08

Special Local Regulation; Find Your Way Home Swim; Detroit River, Grosse Ile, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for certain waters of the Detroit River, Grosse Ile, MI. This action is necessary to protect safety of life on navigable waters immediately prior to, during, and after the Find Your Way Home Swim. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit or a designated representative.

DATES: This temporary final rule is effective from 5 a.m. through 3:30 p.m. on September 23, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2023-0717 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 temporary rule, call or e-mail Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568-9564, or e-mail Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

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 doing so would be impracticable. The Coast Guard did not receive the final details of this swim event until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard’s ability to protect participants, mariners and vessels from the hazards associated with this event.

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 inhibit the Coast Guard’s ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041(a). The Captain of the Port Detroit (COTP) has determined that the likely combination of recreation vessels, commercial vessels, and an unknown number of spectators in close proximity to the swim along the water poses extra and unusual hazards to public safety and property. Therefore, the COTP is establishing a special local regulation around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 5 a.m. through 3:30 p.m.

on September 23, 2023. 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 waterway: all waters of the Detroit River encompassed within the following six points: from 42°05.376'N, 083°09.027'W; a line drawn south to point 42°02.459'N, 083°08.989'W; a line drawn south east to point 42°00.039'N, 083°08.417'W; a line drawn west to point 42°00.024'N, 083°08.501'W; a line drawn north west to point 42°02.43'N, 083°09.308'W; a line drawn north to point 42°05.374'N, 083°09.085'W.

An on-scene representative of the COTP may permit vessels to transit the area when no swim activity is occurring. The on-scene representative may be present on any Coast Guard, state, or local law enforcement vessel assigned to patrol the event. Vessel operators desiring to transit through the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The COTP or his designated on-scene representative may be contacted via VHF Channel 16 or via telephone at (313) 568-9560.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

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-year of the special local regulation. Vessel traffic will be able to safely transit around this special local regulation zone which will impact a small designated area of the Detroit River from 5 a.m. through 3:30 p.m. on September 23, 2023. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the special local regulation and the rule allows vessels to seek permission to enter the 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 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 (Pub. L. 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.

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, Rev. 1, associated implementing instructions, 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 almost eleven hours that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

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: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T09-0717 to read as follows:

§ 100.T09-0717 Special Local Regulation; Find Your Way Home Swim; Detroit River; Grosse Ile, MI.

(a) *Location.* A regulated area is established to encompass the following waterway: all waters of the Detroit River encompassed within the following six points: from 42°05.376'N, 083°09.027'W; a line drawn south to point 42°02.459'N, 083°08.989'W; a line drawn south east to point 42°00.039'N, 083°08.417'W; a line drawn west to point 42°00.024'N, 083°08.501'W; a line drawn north west to point 42°02.43'N, 083°09.308'W; a line drawn north to point 42°05.374'N, 083°09.085'W.

(b) *Enforcement period.* The regulated area described in paragraph (a) of this section will be enforced from 5 a.m. through 3:30 p.m. on September 23, 2023.

(c) *Special local regulations.*

(1) Vessels transiting through the regulated area are to maintain the minimum speeds for safe navigation.

(2) Vessel operators desiring to operate in the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port Detroit (COTP) or his on-scene representative may be contacted via VHF Channel 16 or via telephone at (313) 568-9560. Vessel operators given permission to operate within the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

(3) The “on-scene representative” of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

Dated: August 24, 2023.

Richard P. Armstrong,
Captain, U. S. Coast Guard,
Captain of the Port Detroit.

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