



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2019-0058]**

**RIN 1625-AA08**

**Special Local Regulation; Lake Pontchartrain, New Orleans, LA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposed to establish a temporary special local regulation for certain navigable waters of Lake Pontchartrain in New Orleans, LA. This action is necessary to protect persons and vessels from potential hazards created by the Kenner Super Boat Grand Prix Race. Entry of vessels or persons into this zone would be prohibited unless authorized by the Captain of the Port Sector New Orleans or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0058 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY**

**INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2281, email Benjamin.P.Morgan@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector New Orleans
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On January 19, 2019, Super Boat International Productions (SBIP) notified the Coast Guard that it would be conducting the Kenner Super Boat Grand Prix boat race from 10 a.m. to 5 p.m. on June 23, 2019. The race will take place on Lake Pontchartrain within the following coordinates: 30° 03.056' N / 090° 15.489' W to 30° 02.500' N / 090° 13.547' W to 30° 02.717' N / 090° 13.460' W to 30° 03.252' N / 090° 15.374' W. The Captain of the Port Sector New Orleans (COTP) has determined that potential hazards associated with the race would be a safety concern for anyone within the aforementioned coordinates. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041(a).

**III. Discussion of Proposed Rule**

The COTP proposes to establish a temporary special regulation in the specified

area from 10 a.m. to 5 p.m. on June 23, 2019. The race zone would cover all navigable waters within the following coordinates on Lake Pontchartrain in New Orleans, LA: 30° 03.056' N / 090° 15.489' W to 30° 02.500' N / 090° 13.547' W to 30° 02.717' N / 090° 13.460' W to 30° 03.252' N / 090° 15.374' W. The duration of the area is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled marine event. Only predesignated vessel(s) or person(s) would be permitted within the safety zone. The sponsor would designate a spectator zone on the north side of the race zone, as defined by the aforementioned coordinates, for vessels. No additional vessel(s) or person(s) would be permitted to enter the safety zone without obtaining permission from the COTP or a 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 New Orleans. Vessels requiring entry into this regulated area must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (504) 365-2200. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. No spectator vessel would be allowed to anchor, block, loiter, or impede the through transit of participants or a designated patrol vessel in the regulated area during the effective dates and times, unless cleared for entry by the COTP or the designated representative. Any spectator vessel may anchor outside the regulated area. Spectator vessels might be moored to a waterfront facility within the regulated area in such a way that they would not interfere with the progress of the event. Such mooring would have to 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 might forbid and control the movement of all vessels in the regulated area. When hailed or signaled by a designated patrol vessel, a vessel would come to an immediate stop and comply with the directions given. Failure to do so might result in expulsion from the area, citation for failure to comply, or both. The COTP or a designated representative might 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 would terminate enforcement of the special local regulations at the conclusion of the event.

The COTP or a designated representative would inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 and duration of the temporary special local regulation. The regulated area would cover a small area of the navigable waters within the following coordinates on Lake Pontchartrain in New Orleans, LA: 30° 03.056’ N / 090° 15.489’ W to 30° 02.500’ N / 090° 13.547’ W to 30° 02.717’ N / 090° 13.460’ W to 30° 03.252’ N / 090° 15.374’ W. The duration of the regulated area would be seven hours on one day and would not be expected to significantly affect the vessel traffic on Lake Pontchartrain. The COTP would allow entry into the area on a case-by-case basis. Moreover, the Coast Guard would issue a Local Notice to Mariners (LNM), Marine Safety Information Bulletins (MSIBs), and/or Broadcast Notice to Mariners (BNM) via VHF-FM marine channel 16 about the zone. This would allow waterway users to plan accordingly for transits during this restriction.

#### *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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed 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 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 proposed rule involves a temporary specially regulated area lasting

seven hours that would prohibit entry into the area within the following coordinates: 30° 03.056' N / 090° 15.489' W to 30° 02.500' N / 090° 13.547' W to 30° 02.717' N / 090° 13.460' W to 30° 03.252' N / 090° 15.374' W. This action is categorically excluded from further review under L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is 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 proposed 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.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER**

**INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**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 proposes to amend 33 CFR Part 100 as follows:

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 is amended to read as follows:

**Authority:** 46 U.S.C. 70041(a).

2. Add § 100.T08-0058 to read as follows:

**§ 100.T08-0058 Special Local Regulation; Lake Pontchartrain, New Orleans, LA**

(a) **Location.** The following area is a special local regulation: 30° 03.056' N / 090° 15.489' W to 30° 02.500' N / 090° 13.547' W to 30° 02.717' N / 090° 13.460' W to 30° 03.252' N / 090° 15.374' W.

(b) Effective period. This section is effective from 10 a.m. through 5 p.m. on June 23, 2019.

(c) Regulations. (1) In accordance with the general regulations in §100.35 of this part, entry into or remaining within this regulated area is prohibited unless authorized by the Captain of the Port Sector New Orleans (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 New Orleans.

(2) Vessels requiring entry into this regulated area must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (504) 365-2200.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(4) No spectator vessel is allowed to anchor, block, loiter, or impede the through transit of participants or a designated patrol vessel in the regulated area during the effective dates and times, unless cleared for entry by the COTP or the designated representative.

(5) Any spectator vessel may anchor outside the regulated area. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they do not interfere with the progress of the event. Such mooring have to 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 a designated 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. 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 Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: February 22, 2019

K. M. LUTTRELL,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port Sector New Orleans.

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