



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0420]

RIN 1625-AA00

Safety Zone; Clear Lake, Clear Creek, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within 100 feet of the Pre-Stage Zone, Approach Zone, Course Run Zone and Shut-Down Zone during the Texas Outlaw Challenge in Clear Lake, Clear Creek, TX. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the power boat race. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Houston-Galveston.

DATES: This rule is effective from 7 a.m. to 2 p.m. on June 25, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0420 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT James Mitard, Sector Houston-Galveston Waterways Management Division, U.S. Coast Guard; telephone 281-464-4780, email James.V.Mitard@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
§	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 is impracticable. We must establish this special local regulation by June 25, 2021 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 respond to the potential safety hazards associated with the power boat race being conducted in the third largest recreational boating community in the nation.

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 Houston-Galveston (COTP) has determined that potential hazards associated with the power boat race on June 25, 2021 in Clear Lake, TX, will be a safety concern for anyone within the Pre-Stage Zone, Approach

Zone, Course Run Zone, and Shut-Down Zone before, during, and after the scheduled event. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within these areas during the power boat race.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. to 2 p.m. on June 25, 2021. The safety zone will cover all navigable waters within 100 feet of the different zones of the boat course to include the Pre-Stage Zone, Approach Zone, Course Run Zone and Shut-Down Zone. All of these zones along with the Spectator Zone are described below:

Pre-Stage Zone: This area is the pre-staging area for participating vessels to line up. It will include all waters within the following areas 29° 33.13N 095° 01.84W, 29° 33.12N 095° 01.89W, 29° 33.23N 095° 01.96W, 29° 33.13N 095° 01.84W.

Approach Zone: ¼ mile distance required for participating vessels to obtain the minimum 40mph requirement for course entry. This will be a straight line to begin at approximately 29° 33.256N, 095° 01.89W and end at approximately 29° 33.33N, 095° 02.15W.

Course Run Zone: ¾ mile distance where participating vessels will conduct their high-speed run. This will be a straight line to begin at approximately 29° 33.33N, 095° 02.16W and end at approximately 29° 33.53N, 095° 02.98W.

Shut-Down Zone: 1 mile distance where participating vessels will be allowed to slow their speeds back to an idle. This will be a straight line to begin at approximately 29° 33.53N, 095° 02.98W and end at approximately 29° 33.74N, 095° 04.1W.

Spectator Zone: All vessels that will be viewing the event will be required to stay within a designated area. The sponsor is responsible for marking the spectator zone with 4 buoys on the outer corners and ensuring that all vessels within the area are

anchored and remain in the area during all ongoing high-speed runs.

No vessel or person would be permitted to enter the established zones without obtaining permission from the on-water Safety-Officer or designated representative. If permission to transit the area is granted, the person must comply with the directions of the on-water Safety Officer or 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. 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).

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. This regulatory action will last seven hours and encompasses a 100 foot radius around the boat race path and staging area. The rest of the lake is open to the public to transit. Vessels and persons may seek permission to transit the regulated areas from the on-water Safety Officer or designated representative.

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 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 call or email 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 safety zone lasting 7 hours that will prohibit entry within 100 feet of the boat race course. It is categorically excluded from further review under paragraph L60(a) 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 call or email 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0420 to read as follows:

§ 165.T08-0420 Safety Zone; Clear Lake, Clear Creek, TX

(a) *Location.* The following areas of Clear Lake in Clear Creek, TX make up a safety zone:

(1) *Pre-stage zone.* All navigable waters within 100 feet of the Pre-Stage Zone which includes all waters within the following areas: 29° 33.13N 095° 01.84W, 29° 33.12N 095° 01.89W, 29° 33.23N 095° 01.96W, 29° 33.13N 095° 01.84W;

(2) *Approach zone.* Comprised of all navigable waters within 100 feet of a straight line beginning at approximately 29° 33.256N, 095° 01.89W and ending approximately 29° 33.33N, 095° 02.15W;

(3) *Course run zone.* Comprised of all navigable waters within 100 ft of a straight line beginning at approximately 29° 33.33N, 095° 02.16W and ending at approximately 29° 33.53N, 095° 02.98W;

(4) *Shut-down zone.* Comprised of all navigable waters within 100 feet of a straight line beginning at approximately 29° 33.53N, 095° 02.98W and ending at approximately 29° 33.74N, 095° 04.1W.

(5) *Spectator zone.* All vessels that will be viewing the event must remain anchored within a designated area during all ongoing high-speed runs. The sponsor is responsible for marking the spectator zone with 4 buoys on the outer corners.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, persons and vessels are prohibited from entering the safety zone unless authorized by the the on-water Safety Officer 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 Houston-Galveston.

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the on-water Safety Officer or a designated representative. They may be contacted on VHF radio Channel 16.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the on-water Safety Officer or designated representative while navigating in the regulated area.

(c) *Enforcement period:* This safety zone will be enforced from from 7 a.m. to 2 p.m. on June 25, 2021.

J. E. Smith

Captain, U.S. Coast Guard,

Captain of the Port Houston-Galveston

