



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0224]

RIN 1625-AA00

Safety Zone; Sabine River, Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Sabine River, extending the entire width of the river adjacent to the public boat ramp located in Orange, TX. The safety zone is necessary to protect persons and vessels from hazards associated with a high-speed drag boat race competition in Orange, TX. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative.

DATES: This rule is effective from 9 a.m. on May 4, 2024, through 6 p.m. on May 5, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0224 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 about this rule, call or email Lieutenant Sean Yanez, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409-723-5027, email Sean.P.Yanez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port Marine Safety Unit Port Arthur
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 under authority in 5 U.S.C. 553(b)(B). This statutory 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.” 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. It is impracticable to publish an NPRM because we must establish this temporary safety zone by May 4, 2024 and lack sufficient time to provide a reasonable comment period and consider those comments before issuing the rule.

Also, 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 impracticable because establishing the safety zone by May 4, 2024, is necessary to protect all waterway users during scheduled race events.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that the potential hazards associated with high-speed drag boat races are a safety concern for persons and vessels operating on the Sabine River. Possible hazards include risks of injury or death from near or actual contact among participant vessels and spectators or

mariners traversing through the safety zone. This rule is needed to protect all waterway users, including event participants and spectators, before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 9 a.m. on May 4, 2024, through 6 p.m. on May 5, 2024, and will be enforced each day from 9 a.m. through 6 p.m.. The safety zone covers all navigable waters of the Sabine River, extending the entire width of the river, adjacent to the public boat ramp located in Orange, TX, bounded on the north by the Orange Municipal Wharf at latitude 30°05'50" N and to the south at latitude 30°05'33" N. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels in the navigable waters of the Sabine River during high-speed drag boat races and will include breaks and opportunities for vessels to transit through the regulated area. No vessel or person will be permitted to enter the safety zone 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. This rule has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). 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 safety zone. This safety zone encompasses a less than half-mile stretch of the Sabine River that will be enforced for eight hours on two consecutive days. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNMs) via VHF-FM marine channel 16 about the zone. Daily enforcement periods will include breaks that will provide an opportunity for vessels to transit through the regulated area, and the rule allows vessels to seek permission to enter the zone.

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 safety zone 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 may 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 businesses. 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 that is effective for eight hours on each of two days that will prohibit entry on less than a one-half-mile stretch of the Sabine River. 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 AREA AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T08-0224 to read as follows:

§ 165.T08-0224 Safety Zone; Sabine River, Orange, Texas.

(a) *Location.* The following area is a safety zone: All navigable waters of the Sabine River, extending the entire width of the river, adjacent to the public boat ramp located in Orange, TX, bounded on the north by the Orange Municipal Wharf at latitude 30°05'50" N and to the south at latitude 30°05'33" N.

(b) *Definition.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Marine Safety Unit Port Arthur (COTP) in the enforcement of the safety zone. Furthermore, "official patrol vessel" means a vessel, including any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative, that is designated to patrol the regulated area.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23 of this part, all persons and vessels, including spectator vessels, are prohibited from entering, transiting through, anchoring in, or remaining with the regulated area during the effective dates and times, unless authorized by the COTP or a designated representative. The COTP or their designated representative may be contacted on VHF-FM channel 13 or 16 or by telephone at 409-719-5070.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators or spectator vessels.

(3) Spectator vessels desiring to transit the regulated area may do so only with approval from the COTP or a designated representative, and when so directed by that

officer, will be operated at a minimum safe navigation speed in a manner that will not endanger participants in the regulated area or any other vessels.

(4) Any spectator vessel may anchor outside the regulated area but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

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

(6) 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.

(d) *Enforcement periods.* This section will be enforced from 9 a.m. through 6 p.m. on May 4, 2024, and May 5, 2024. Breaks in the racing will occur during the enforcement periods, which will allow for vessels to pass through the safety zone. The COTP or a designated representative will provide notice of enforcement appropriate per paragraph.

(e) *Informational broadcasts.* The COTP or a designated representative will 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.

Dated: April 24, 2024.

Anthony R. Migliorini,
Captain, U.S. Coast Guard,
Captain of the Port, Marine Safety Unit Port Arthur.

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