



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0312]

RIN 1625-AA08

Special Local Regulation; Clear Lake, Clear Creek, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a special local regulation for certain waters within Clear Lake, Clear Creek, TX. This action is necessary to provide safety of life on these navigable waters immediately before, during, and after the Texas Outlaw Challenge, a power boat race being held annually on the third Friday of June. This proposed rulemaking would prohibit persons and vessels not participating in the event from being within the specified zone unless authorized by the Captain of the Port Houston/Galveston (COTP) 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 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0312 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 MST3 Sarah Kessler, Waterways Management Division, U.S. Coast Guard; 281-464-4891, Sarah.A.Kessler@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
COTP	Captain of the Port

II. Background, Purpose, and Legal Basis

On April 16, 2019, The Offshore Thunder Productions notified the Coast Guard that they will be hosting a power boat race from 9 to 11:30 a.m. on June 21, 2019. This event will take place in Clear Lake. The COTP has determined that potential hazards associated with the power boat race would be a safety concern for anyone within the Pre-Stage Zone, Approach Zone, Course Run Zone, Shut-Down Zone, and Turn Zone.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the Pre-Stage Zone, Approach Zone, Course Run Zone, and Shut-Down Zone before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 9 to 11:30 a.m. on the third Friday of June. The special local regulation will encompass 5 different zones to include The Pre-Stage Zone, Approach Zone, Course Run Zone, Shut-Down Zone, and the Spectator Zone as 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.

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, location, and duration of the power boat race. The safety zone will impact a small area of Clear Lake for two and one-half hours on June 21, 2019. The Coast Guard will issue a

Broadcast notice to Mariners via VHF-FM marine channel 16 regarding the special local regulations, and the zone will allow 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 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 established zones 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 special local regulation lasting two and one-half hours that would prohibit entry into the established zones. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. 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 <https://www.regulations.gov>. If your material cannot be submitted using <https://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.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 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. Amend §100.801 by adding an entry 7 in Table 3 to read as follows:

§100.801 Annual Marine Events in the Eighth Coast Guard District.

Table 3 of §100.801—Sector Houston-Galveston Annual and Recurring Marine Events

7. The 3 rd Friday morning in June	Texas Outlaw Challenge/Offshore Thunder Productions	Clear Lake, TX	Clear Lake from the beginning of the Pre Stage Zone to the end of the Shut-Down Zone.
			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.

			<p>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.</p>
			<p>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.</p>
			<p>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.</p>

Dated: May 3, 2019

K. D. Oditt
 Captain, United States Coast Guard,
 Captain of the Port Houston/Galveston.

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