



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2023-0954]

RIN 1625-AA00

### Safety Zone; Upper Galveston Bay, Kemah, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within an 840-foot radius of the firework display barge in the Galveston Bay on the south side of the channel, near Kemah Boardwalk in Kemah, TX. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks show. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Houston-Galveston.

**DATES:** This rule is effective from 8 through 11 p.m. on December 31, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0954 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 Marine Science Technician First Class Christopher C. Morgan, Sector Houston-Galveston Waterways Management Division, Coast Guard; Telephone (713) 398-5823, E-mail [houstonwwm@uscg.mil](mailto:houstonwwm@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Houston-Galveston
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
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. The Coast Guard received all amplifying information for this event regarding the need for a safety zone on December 4, 2023. The Coast Guard must establish this safety zone by December 31, 2023, and lacks the time for a reasonable comment period and to 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 action is needed on December 31, 2023, to ensure the safety of personnel, vessels, and the marine environment from potential hazards created by the fireworks show.

## **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 Houston-Galveston (COTP) has determined that potential hazards associated with the fireworks show on December 31, 2023, in Kemah, TX, will be a

safety concern for anyone within an 840-foot radius of a fireworks display barge, located in Galveston Bay, TX at 29°32'52.72" N, 95°00'54.38" W, on the south side of the channel. The purpose of this rulemaking is to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the scheduled fireworks display.

#### **IV. Discussion of the Rule**

The fireworks will take place from approximately 9 p.m. to 9:30 p.m. on December 31, 2023. The safety zone will cover all navigable waters within an 840-foot radius of a fireworks display barge, located in Galveston Bay, TX, at 29°32'52.72" N, 95°00'54.38" W, on the south side of the channel. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the fireworks display. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF-FM channel 16 or by telephone at 866-539-8114. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

#### **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, duration, and location of the safety zone. The safety zone will last for the limited duration of three hours. It covers an 840-foot radius of navigable waters of Galveston Bay, TX. The zone does not completely restrict vessel traffic and allows mariners to ask for 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 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 temporary safety zone lasting only three hours that will prohibit entry within 840 feet of the fireworks display barge. 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, 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.T08-0954 to read as follows:

**§ 165.T08-0954 Safety Zone; Galveston Bay, Galveston, TX.**

(a) *Location.* The following area is a safety zone: All navigable waters within an 840-foot radius of a fireworks display barge, located in Galveston Bay, TX at 29°32'52.72" N, 95°00'54.38" W, on the south side of the channel.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Houston-Galveston in the enforcement of the regulated areas.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Houston-Galveston (COTP) or a designated representative.

(2) Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF-FM channel 16 or by telephone at 866-539-8114.

(d) *Enforcement period.* This section will be enforced from 8 until 11 p.m., on December 31, 2023.

Dated: December 7, 2023

Keith M. Donohue,  
Captain, U.S. Coast Guard,  
Captain of the Port Houston-Galveston  
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