



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2024-0119]

RIN 1625-AA00

### Safety Zone; Reoccurring Firework Displays near Convention Center on the Mobile River, Mobile, AL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a safety zone for reoccurring firework displays on the Mobile River in the vicinity of the Arthur R. Outlaw Convention Center in Mobile, AL. The safety zone would be enforced only during the firework displays. Establishment of this safety zone is necessary to protect waterway users and vessels from potential hazards associated with these firework displays. This proposed rulemaking would prohibit entry into the safety zone during the firework displays unless authorized by the Captain of the Port Mobile (COTP), or a COTP designated representative.

**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-2024-0119 using the Federal Decision-Making 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. This notice

of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket USCG-2024-0119.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Lawrence J. Schad, Waterways Management, Sector Mobile, U.S. Coast Guard; telephone 251-382-8653, email SectorMobileWaterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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

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

The Coast Guard receives numerous event applications for firework displays on the Mobile River, to be held in the vicinity of the Arthur R. Outlaw Convention Center in Mobile, AL. These displays are sponsored by multiple organizations and held sporadically throughout the year. Based on previous years, approximately five to ten displays are expected to be held on any given year. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within an area up to a 100-yard radius of the barge upon which the display occurs.

The purpose of this proposed rule is to ensure the safety of vessels, participants, and waterways users within a 100-yard radius of the fireworks barge immediately before, during, and after scheduled events. The method to announce the enforcement details of the safety zone will be made by marine broadcasts, local notice to mariners, local news

media, distributions in leaflet form, or on scene oral notice as appropriate. The Coast Guard may also issue notices of enforcement in the Federal Register to announce the dates and times of the safety zone enforcement. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a reoccurring safety zone covering all navigable waters within a 100-yard radius of barge-based firework displays on the Mobile River. The safety zone would be subject to enforcement for approximately one hour when a barge-based fireworks display is scheduled to occur. No person would be allowed within 100 yards of the fireworks barges immediately before, during, and immediately after firework displays. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP, or a COTP designated representative. 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. This NPRM 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, the NPRM

has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic may be able to safely transit around this safety zone which would impact a small, 100-yard, designated area of the Mobile River for approximately one hour or less on an estimated five to ten days of the year. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would 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 safety zone 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 proposed 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 rulemaking would economically affect it.

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 proposed rule. If the proposed 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. 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 call or email 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 potential effects of this proposed rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this proposed 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 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 safety zone that would prohibit entry within 100 yards of a fireworks barge for one hour periods, several times a year. Normally such actions are categorically excluded from further review under paragraph L(60)a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. 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 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.

### **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.

*Submitting comments.* We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2024-0119 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the proposed rule, you should see a "Subscribe" option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided.

For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **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 is proposing to amend 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 § 165.834 to read as follows:

#### **§ 165.834 Safety Zone, Reoccurring Firework Displays near Convention Center on the Mobile River, Mobile, AL.**

(a) *Location.* The following area is a safety zone: All navigable waters on the Mobile River 100 yards in all directions from any barges holding fireworks immediately before, during, and immediately after firework displays. The barges will generally be located in the Mobile River in the vicinity of the Arthur R. Outlaw Convention Center.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Mobile (COTP) or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF CH-16. Those in the safety zone must comply with all lawful orders or

directions given to them by the COTP or the COTP's designated representative.

(d) *Notification.* COTP will use all appropriate means to notify the public in advance of an event of the enforcement of this safety zone either by publishing a Notice of Enforcement in the Federal Register or through the local Notice to Mariners and Broadcast Notice to Mariners. Such notifications will include the date and times of enforcement, along with any pre-determined conditions of entry. Firework barges will also have a sign on their port and starboard side labeled "FIREWORKS—STAY AWAY". This sign will consist of a ten inch high by one and half inch wide red lettering on a white background.

(e) *Enforcement period.* This rule will be enforced anytime immediately before, during, and immediately after a barge is conducting firework displays on the Mobile River. The Coast Guard anticipates that these safety zones will be enforced for a one hour duration for each display, between 7 p.m. and 1 a.m. The exact dates and times will be announced as described in paragraph (d) of this section.

Dated: March 8, 2024.

**U.S. Mullins,**

*Captain, U.S. Coast Guard,*

*Captain of the Port Sector Mobile.*

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