

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

[COTP MIAMI-01-116]

RIN 2116-AA97

**Security Zones; Port of Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL**

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two temporary fixed security zones. One security zone encompasses the waterway located between MacArthur Causeway and Dodge Island in the Port of Miami. Another security zone encompasses the port area west of the Intracoastal Waterway in the north portion of Port Everglades in Fort Lauderdale, Florida. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

**DATES:** This rule is effective from 11:59 p.m. on October 7, 2001 and will terminate at 11:59 p.m. on June 15, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Miami 01-116 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139, between 7:30 p.m. and 4 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Warren Weedon, Coast Guard Marine Safety Office Miami, at (305) 535-8701.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. For the same reasons, 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**. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity to advise mariners of the zone.

**Background and Purpose**

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Miami and Port Everglades against tank vessels and cruise ships entering, departing and moored within these ports. There will be Coast Guard and local police department patrol vessels on scene to monitor traffic through these areas. The Captain of the Port has previously established a temporary moving security zone for cruise ships and vessels carrying cargoes of particular hazard for both ports under docket numbers COTP Miami-01-115 [(67 FR 1101, January 9, 2002)] and COTP Miami-01-093 [(no longer effective, to be published in quarterly notice of temporary rules issued)].

**Discussion of Rule**

We are creating two security zones: One in the Port of Miami, Florida and one in Port Everglades, Fort Lauderdale, Florida. These temporary fixed security zones are activated when cruise ships and vessels carrying cargoes of particular hazard are moored within these zones.

The Port of Miami fixed security zone encompasses all waters between Watson Park and Star Island on the MacArthur Causeway south to the Port of Miami on Dodge Island. The western boundary is formed by an imaginary line from points 25°46.76' N, 080°10.87' W, to 25°46.77' N, 080°10.92' W to 25°46.88' N, 080°10.84' W and ending on Watson Park at 25°47.00' N, 080°10.67' W. The eastern boundary is formed by an imaginary line from the traffic light located at Bridge road, which leads to Star Island on MacArthur Causeway directly extending across the Government Cut channel to Lummus Island, at 25° 46.32' N, 080°09.23' W.

The Port Everglades fixed security zone includes all port waters west of a line starting at the northern most point 26°05.98' N, 080°07.15' W, near the west side of the 17th Street Bridge, to the southern most point 26°05.41' N, 080°06.97' W on the tip of the pier near Burt and Jacks Restaurant, Port Everglades, Florida.

The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz). Entry into these security zones is prohibited unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative. Local and federal law enforcement officials will be patrolling these security zones.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) this is a temporary zone and vessels may be allowed to enter the security zone on a case by case basis with the permission of the Captain of the Port.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include 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.

Therefore, 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 because small entities may be allowed to enter the zone on a case by case basis with authorization of the Captain of the Port.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 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).

#### Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

#### Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 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 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.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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 relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### 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:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07-116 is added to read as follows:

#### § 165.T07-116 Security Zones; Ports Everglades and the Port of Miami, Florida.

(a) *Port of Miami regulated area.* A temporary fixed security zone is established encompassing all waters between Watson Park and Star Island on the MacArthur Causeway south to the Port of Miami on Dodge Island. The western boundary is formed by an

imaginary line from points 25°46.76' N, 080°10.87' W, to 25°46.77' N, 080°10.92' W to 25°46.88' N, 080°10.84' W and ending on Watson Park at 25°47.00' N, 080°10.67' W. The eastern boundary is formed by an imaginary line from the traffic light located at Bridge road, which leads to Star Island on MacArthur Causeway directly extending across the Government Cut channel to Lummus Island, at 25°46.32' N, 080°09.23' W.

(b) *Port Everglades regulated area.* A temporary fixed security zone is established encompassing all waters west of an imaginary line starting at the northern most point 26°05.98' N, 080°07.15' W, near the west side of the 17th Street Bridge, to the southern most point 26°05.41' N, 080°06.97' W on the tip of the pier near Burt and Jacks Restaurant, Port Everglades, Florida.

(c) *Regulations.* These temporary fixed security zones are activated when cruise ships and vessels carrying cargoes of particular hazard are moored within these zones. In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, a Coast Guard commissioned, warrant, or petty officer, or other law enforcement officer designated by him. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(d) *Dates.* This section becomes effective at 11:59 p.m. on October 7, 2001 and will terminate at 11:59 p.m. on June 15, 2002.

Dated: October 7, 2001.

**J.A. Watson, IV,**

*Captain, U.S. Coast Guard, Captain of the Port Miami.*

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**BILLING CODE 4910-15-P**

#### DEPARTMENT OF DEFENSE

#### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

#### United States Navy Restricted Area, Elizabeth River, Virginia

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending its regulations, which establish a restricted area on the Elizabeth River in the vicinity of the Craney Island Refueling Station at Portsmouth, Virginia. The regulations are necessary to safeguard Navy vessels and United States Government facilities