

## Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications under that Order.

## 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 would 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.

## Protection of Children

The Coast Guard has 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 relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A

“Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under ADDRESSES.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, 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, and 160.5; 49 CFR 1.46.

2. From 8:30 a.m. on July 19, 2002 until 11 p.m. on July 21, 2002, a new temporary § 165.T09–011 is added to read as follows:

### § 165.T09–011 Safety Zone; Lake Michigan, Gary, Indiana.

(a) *Location.* The following is a safety zone: all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a radius of 5 nautical miles with its center in approximate position 41°37'25" N, 087°15'42" W (off of Miller Beach Ogden Dunes). These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Enforcement periods.* This section will be enforced from 8:30 a.m. to 5 p.m. (local), on July 19, 2002; from 8:30 a.m. to 5 p.m. (local), on July 20, 2002; and from 8:30 a.m. to 11 p.m. on July 21, 2002.

(c) *Regulations.* In accordance with § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated on scene representative. Section 165.23 also contains other applicable requirements.

Dated: June 28, 2002.

**R.E. Seebald,**

*Captain, Coast Guard, Captain of the Port Chicago.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[COTP Miami–02–054]

RIN 2115–AA97

**Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL, and Port of Key West, Key West, Florida; Hutchinson Island Power Plant, St. Lucie, Florida, and Turkey Point Power Plant, Florida City, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard will be maintaining temporary security zones in the Captain of the Port Miami area for national security reasons to protect the public and ports from potential subversive acts. Similar security zones have been in effect under temporary rules following the terrorist attacks of September 11, 2001, on the World Trade Center and Pentagon. While this temporary rule is in effect, the Coast Guard will engage in notice and comment rulemaking to propose that these security zones be made permanent. Entry into these zones will be prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

**DATES:** This rule is effective from 12 midnight on June 16, 2002 until 11:59 p.m. on December 15, 2002. Comments and related material must reach the Coast Guard on or before September 13, 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 [COTP Miami 02–054] and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139–6940, between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant 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 was 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 enforcement vessels in the vicinity to advise mariners of the restriction. While this rule is in effect, the Coast Guard will complete notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment within the Captain of the Port Miami zone.

#### Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Miami 02-054] indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

#### Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and maintain an interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely.

The Captain of the Port (COTP) of Miami has determined that there is an increased risk that subversive activity

could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida against hazardous cargo vessels and high capacity passenger vessels entering, departing and moored within these ports. The same threat is posed to the power plants located at Hutchinson Island and Turkey Point and these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

The Coast Guard Captain of the Port (COTP), Miami established temporary security zones in these areas shortly following the September 11, 2001 attacks. Those temporary final rules (TFRs) issued before this rulemaking will expire soon:

On September 11, 2001, the COTP issued a TFR (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01-093) for 100-yard security zones around certain vessels in the Port of Palm Beach, Miami, Port Everglades, and Key West, FL, that expired September 25, 2001. On September 25, 2001, the COTP issued another TFR (67 FR 1101, January 9, 2002, COTP Miami 01-115) that maintained these 100-yard security zones around certain vessels in the Ports of Palm Beach, Miami, Port Everglades, and Key West, FL, and added a reference to specific points (buoys) where moving zones were activated and deactivated. This second TFR will expire June 15, 2002.

On September 21, 2001, the COTP issued a TFR (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01-106) for security zones around Turkey Point and Saint Lucie, FL, nuclear power plants that expired November 21, 2001. On December 10, 2001, the COTP issued another TFR (67 FR 4355, January 30, 2002, COTP Miami 01-142) for security zones around these two nuclear power plants that will expire June 15, 2002.

On October 7, 2001, the COTP issued a TFR (67 FR 6652, February 13, 2002, COTP Miami 01-116) for fixed-security zones in Port Everglades and Miami, FL, that will expire June 15, 2002.

On October 11, 2001, the COTP issued a TFR (67 FR 4177, January 29, 2002, COTP Miami 01-122) for a fixed-security zone for Port Everglades, FL, that will expire June 15, 2002.

#### Discussion of Rule

In this one rule, the COTP is combining the security zones discussed in the four immediately preceding paragraphs. These zones are described below in the same order as they appear in the regulation, 33 CFR 165.T07-054.

*Fixed and Moving Security Zones Around Vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West*—Paragraph (a)(1) of this temporary rule will create 100-yard fixed and moving security zones in the Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL. These security zones will be activated when a cruise ship, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in Title 33, Code of Federal Regulations parts 126 and 127 respectively, enter or moor within one of these Ports. The security zones will be activated when a subject vessel passes the sea buoy for inbound transits, and is deactivated when the vessel departs the port and passes the sea buoy.

*Fixed Security Zone in the Port of Miami*—Paragraph (a)(2) of this temporary rule will create a fixed security zone encompassing all waters between the Port of Miami and MacArthur Causeway. The fixed security zones is activated when two or more high capacity passenger vessels, vessels carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in Title 33, Code of Federal Regulations part 120, 126, and 127 respectively, enter or moor within this zone.

*Fixed Security Zones in Port Everglades*—Paragraph (a)(3) of this temporary rule will create a fixed security zone encompassing the waters of the Intracoastal Waterway between the northern tip of Port Everglades berth 22 near Burt and Jacks Restaurant and a point directly east across the Intracoastal Waterway; and a line drawn from the corner of Port Everglades berth 29 at point easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area. The fixed security zone is activated when a cruise ship, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in Title 33, Code of Federal Regulations part 126 and 127 respectively, enter or moor within this zone.

*Hutchinson Island Power Plant and Turkey Point Power Plant*—Paragraph (a)(4) of this temporary rule will create a security zone in waters around the Hutchinson Island (Port St. Lucie) nuclear power plant. The zone will include all waters within a line connecting the following points: 27°21.20' N, 080°16.26' W; 27°19.18' N, 080°15.21' W; 27°20.36' N, 080°12.83' W; 27°22.43' N, 080°13.8' W. Paragraph (a)(5) will create a security zone for Turkey Point power plant. The zone

will include all land and water within lines connecting the following points: 25°26.8' N, 080°16.8' W; 25°26.8' N, 080°21' W; 25°20' N, 080°16.8' W; 25°20' N, 080°20.4' W.

#### 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because vessel traffic may be minimally impacted for short periods to allow for the arrival and departure of high risk vessels. Alternate vessel traffic routes have also been accounted for to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels into these security zones on a case-by-case basis.

#### 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 most small entities will be able to transit around the security zones and they may be allowed to enter the zone on a case-by-case basis with the 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 (Public Law 104–121), we offered to assist small entities in understanding this 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.

#### Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (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.

#### 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 would not create an environmental risk to health or risk to safety that might 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 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### 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 that order because it is not a “significant regulatory 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.

#### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because no environmental changes will be affected with the security zone implementation. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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.T07–054 is added to read as follows:

**§ 165.T07-054 Security Zones, Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, FL; St. Lucie Hutchinson Island, and Turkey Point Power Plants, FL.**

(a) The following areas are security zones:

(1) *Fixed and Moving Security Zones Around Vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West*—Temporary moving security zones are established 100 yards around all high capacity passenger vessels, vessels carrying cargoes of particular hazard or liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: “LW” buoy, at approximate position 26°46’18” N, 080°00’36” W when entering the Port of Palm Beach, passes “PE” buoy, at approximate position 26°05’30” N, 080°04’48” W when entering Port Everglades; the “M” buoy, at approximate position 25°46’06” N, 080°05’ when entering the Port of Miami; and “KW” buoy, at approximate position 24°27’42” N, 081°48’06” W when entering the Port of Key West. Temporary fixed security zones are established 100 yards around all high capacity passenger vessels, vessels carrying cargoes of particular hazard or liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, while they are docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(2) *Fixed Security Zone in the Port of Miami*—A fixed security zone encompasses all waters between Watson Park and Star Island on the MacArthur Causeway south to the Port of Miami. 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, and MacArthur Causeway directly extending across the Main Channel to the Port of Miami, at 25°46.32’ N, 080°09.23’ W. The fixed security zone is activated when two or more of either a high capacity passenger vessel, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in 33 CFR parts 120, 126, and 127 respectively, enter or moor within this zone.

(i) Vessels may transit the Main Channel when only one cruise ship or

vessel carrying cargoes of particular hazard are berthed, by staying on the north side of the law enforcement boats and cruise ship tenders which will mark a transit lane in channel.

(ii) When high capacity passenger vessels are not berthed on the Main Channel, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed Security Zones in the Port Everglades*—A temporary fixed security zone encompasses 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 northern tip of pier 22 near Burt and Jacks Restaurant, Port Everglades, Florida. An additional temporary fixed security zone encompasses the Intracoastal Waterway between a line connecting point 26°05.41’ N, 080°06.97’ W on the northern tip of berth 22 near Burt and Jacks Restaurant and a point directly east across the Intracoastal Waterway to 26°05.41’ N, 080°06.74’ W; and a line drawn from the corner of Port Everglades berth 29 at point 26°04.72’ N, 080°06.92’ W, easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area at point 26°04.72’ N, 080°06.81’ W. The fixed security zone is activated when a cruise ship, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in 33 CFR parts 126 and 127 respectively, enter or moor within this zone.

(i) Vessels may transit the Intercoastal Waterway when high capacity passenger vessels or vessels carrying cargoes of particular hazard are berthed, by staying east of the law enforcement boats and cruise ship tenders which will mark a transit lane in the Intercoastal Waterway.

(ii) Periodically, vessels may be asked to temporarily hold their positions while large commercial traffic operates in this area. Vessels near this security zone must follow the orders of the law enforcement vessels on scene. When high capacity passenger vessels are not berthed on the Intercoastal Waterway, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(4) *Hutchinson Island Power Plant*—A temporary security zone encompasses all waters within lines connecting the following points: 27°21.20’ N, 080°16.26’ W; 27°19.18’ N, 080°15.21’ W; 27°20.36’ N, 080°12.83’ W; 27°22.43’ N, 080°13.8’ W.

(5) *Turkey Point Power Plant*—A temporary security zone encompasses all land and water within lines connecting the following points: 25°26.8’ N, 080°16.8’ W; 25°26.8’ N, 080°21’ W; 25°20’ N, 080°16.8’ W; 25°20’ N, 080°20.4’ W.

(b) *Regulations.* (1) Prior to commencing the movement, the person directing the movement of a high capacity passenger vessel, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in 33 CFR parts 120, 126 and 127 respectively, shall make a security broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) to advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations in § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port Miami or his designated representative. Certain industry vessels such as pilot boats, cruise ship tenders, tug boats and contracted security vessels may patrol these zones to strictly advise mariners of the restrictions. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) when the security zones are being enforced.

(3) Persons desiring to enter or transit the area of the security zone may contact the Captain of the Port on VHF Marine Band Radio, Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(4) The Captain of the Port Miami may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for the purpose of port security, safety or environmental safety.

(c) *Dates.* This section is effective from 12 midnight on June 16, 2002 until 11:59 p.m. on December 15, 2002.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: June 13, 2002.

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

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

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**BILLING CODE 4910-15-P**