

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Parts 107 and 165**

[USCG–2004–17509]

RIN 1625–AA86

**Unauthorized Entry Into Cuban Territorial Waters****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

**SUMMARY:** The Coast Guard, pursuant to Presidential proclamation and order of the Secretary of Homeland Security, and after consultation with several Departments and agencies, is requiring U.S. vessels, and vessels without nationality, less than 100 meters (328 feet), located within the internal waters or the 12 nautical mile territorial sea of the United States, that thereafter enter Cuban territorial waters, to apply for and receive a Coast Guard permit. In establishing this requirement, the Coast Guard is also removing the security zone in the coastal waters adjacent to Florida and incorporating many of its requirements into this rule. That security zone required non-public vessels less than 50 meters (165 feet) that intended to enter Cuban territorial waters to receive Coast Guard authorization. This rule is necessary to provide for the safety of United States citizens and residents who may be subject to excessive force, including deadly force, upon entering Cuban territorial waters, to improve enforcement of the embargo against the Government of Cuba, and to prevent a threatened disturbance of the international relations of the United States.

**DATES:** This rule is effective on July 2, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket USCG–2004–17509, and are available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Lieutenant Commander Brad Kieserman, Office of Law Enforcement (G–OPL), U.S. Coast Guard Headquarters, telephone (202) 267–

1890. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

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

Pursuant to 5 U.S.C. 553(a)(1), we did not publish a notice of proposed rulemaking (NPRM) for this regulation. This provision exempts traditional notice and comment rulemaking under the Administrative Procedure Act “to the extent that there is involved \* \* \* a military or foreign affairs function of the United States.” The Coast Guard finds that immediate establishment of this rule is necessary to protect the safety of lives and property at sea, including lives that may be endangered by the use of excessive or deadly force by the Government of Cuba, to improve enforcement of the economic sanctions against the Government of Cuba, and to prevent threatened disturbance of the international relations of the United States. This rule is necessary to implement U.S. foreign policy and is enforceable using the Coast Guard’s military assets. Accordingly, this rule involves a military function of the United States, and pursuant to section 1 of Proclamation 7757, this rule involves a foreign affairs function of the United States.

Even if the requirements of 5 U.S.C. 553 would otherwise be applicable, the Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to the public interest. On February 26, 2004, the President continued the national emergency relating to Cuba. 69 FR 9513. Also, on that day, the President, in Proclamation 7757, expanded the scope of that emergency and the emergency authority relating to the regulation and movement of vessels into Cuban territorial waters. 69 FR 9515. The President set out twelve reasons why there existed a worsening of the threat to U.S. international relations. These reasons included a threat of excessive force, including deadly force, against persons on board U.S. vessels, and sufficiently grave Cuban government actions to warrant a U.S. warning to Cuba that a mass migration would be viewed as a hostile act. Thus, the President directed the Secretary to take action (69 FR at 9516). Immediate action is needed to protect the safety of lives and property at sea, to improve enforcement of the economic sanctions against the Government of Cuba, and to prevent

threatened disturbance to the international relations of the United States. This rule is based upon a Presidential declaration of a national emergency and order of the Secretary of Homeland Security. Opportunity for notice and public comment or advance publication of the rule was impracticable because of the need to take immediate action. This regulation is tailored to meet the needs of national security and the international relations of the United States, with a minimal burden on the public.

**Background and Purpose**

On March 1, 1996, the President of the United States signed Proclamation 6867 (“Proclamation 6867”), declaring a national emergency following the February 24, 1996, shooting down of two Brothers to the Rescue aircraft by Cuban armed forces (61 FR 8843). In Proclamation 6867, which addressed the disturbances or threatened disturbances of United States international relations, the President authorized the Secretary of Transportation to regulate the anchorage and movement of domestic and foreign vessels (61 FR 8843). Order No. 96–3–7, signed by the Secretary of Transportation, delegated this authority to the Commandant, United States Coast Guard (61 FR 9219). This authority was further delegated to the Commander, Seventh Coast Guard District and appropriate Captains of the Port (61 FR 9219). To secure the rights and obligations of the United States and to protect its citizens and residents from the use of excessive force upon them by foreign powers, the Coast Guard on March 1, 1996 (61 FR 9348), pursuant to its regulatory authority in 50 U.S.C. 191 and as supplemented by the authority delegated to the Secretary of Transportation in the Presidential Proclamation, established a security zone within the internal waters and territorial seas of the United States, adjacent to or within the coastal waters around southern Florida. This security zone prohibited private, noncommercial vessels, including foreign vessels, less than 50 meters in length, from departing the security zone with the intent to enter Cuban territorial waters, absent express authorization from the Captain of the Port (COTP).

On May 14, 1997 (62 FR 26390), the Coast Guard published a rule revising the security zone to prohibit a similar class of vessels from getting underway in or departing the security zone with the intent to enter Cuban territorial waters without express authorization from the COTP. Under the revised security zone, commercial vessels less than 50 meters in length became subject

to the same restrictions as private, noncommercial vessels less than 50 meters in length.

On July 17, 1998 (63 FR 38476), the Coast Guard published a rule again revising the security zone by expanding its geographic scope to the Florida peninsula, encompassing all of the internal waters and territorial seas of the United States adjacent to or within the State of Florida and within the boundaries of the Seventh Coast Guard District.

On November 2, 2000, the Coast Guard revised the security zone to better define enforcement and the process for applying for a permit to depart the zone (65 FR 65783).

On February 26, 2004, in Proclamation 7757 (69 FR 9515), the President of the United States expanded the scope of the national emergency and emergency authority declared in Proclamation 6867, and amended the reasons for which there exists a disturbance or threatened disturbance of the international relations of the United States. In Proclamation 7757, the President declared, *inter alia*, that: The United States has determined that Cuba is a state sponsor of terrorism; the Cuban government has demonstrated a ready and reckless willingness to use excessive force, including deadly force, against U.S. citizens and its own citizens; the entry of U.S.-registered vessels into Cuban territorial waters could result in injury to, or loss of life of, persons engaged in such conduct; Cuba has impounded U.S.-flagged vessels and forced them as a condition of release to violate U.S. laws; the objectives of the United States policy regarding Cuba are the end of the dictatorship and a rapid, peaceful transition to a representative democracy respectful of human rights and characterized by an open market economic system; a critical initiative to advance U.S. objectives is to deny resources to the repressive Cuban government; and the Cuban government has recently and over the last year taken a series of steps to destabilize relations with the United States, causing a sudden and worsening disturbance of U.S. international relations.

Consequently, the President has determined that the unauthorized entry of U.S.-registered vessels and vessels subject to the jurisdiction of the U.S. (which includes, but is not limited to, vessels without nationality pursuant to 46 U.S.C. App. 1903) into Cuban territorial waters is detrimental to the foreign policy of the United States, which is to deny monetary and material support to the repressive Government of Cuba, and that such unauthorized

entries could threaten a disturbance of the international relations of the United States by facilitating Cuban government support of terrorism, the use of excessive or deadly force, and the continued existence of the Cuban government. Thus, the President continued and expanded the basis for continuing the declared emergency and the finding of a threatened disturbance of the international relations of the United States to include the unauthorized entry of certain vessels of the United States into Cuban territorial waters.

We have placed in the docket a copy of the President's Rose Garden Statement of October 10, 2003, in which the President announced new initiatives to strengthen enforcement of trade and travel restrictions with respect to Cuba. This announcement is in furtherance of long-standing U.S. foreign policy to bring about in Cuba the peaceful transition to democracy.

The United States imposes economic sanctions against Cuba to restrict the flow of currency transactions and goods to Cuba. The U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) regulates transactions involving Cuba, and the U.S. Department of Commerce, Bureau of Industry and Security (BIS) regulates exports, including ships and ship-stores.

Among other things, Proclamation 7757 authorizes the Secretary of Homeland Security ("the Secretary") to issue rules and regulations to ensure that Coast Guard decisions regarding entry of U.S. vessels into Cuban territorial waters are made in a manner consistent with the decisions of other agencies responsible for economic sanctions enforcement. Specifically, in section 1 of Proclamation 7757, the President authorized the Secretary to make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions, or result in unauthorized transactions, and thereby threaten a disturbance of international relations.

In Order 2004-001, the Secretary delegated to the Commandant of the Coast Guard and, subject to the direction of the Commandant, to the several Coast Guard Area and District Commanders, the authority to make such rules and regulations, and vested in the Commandant and those officers all powers and authorities given to the Secretary in Proclamation 7757. This delegation to the Coast Guard from the

Secretary necessarily includes the authority to establish and enforce rules and regulations regarding the movement and anchorage of certain vessels of the United States, and vessels without nationality, in U.S. territorial waters, including a requirement for the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels to present evidence of compliance with the regulations implementing economic sanctions against Cuba as a condition of usage of, and operations in, U.S. territorial waters. This rule, therefore, requires any vessel of the United States,<sup>1</sup> and vessels without nationality, less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels that depart U.S. territorial waters and thereafter enter Cuban territorial waters, regardless of whether such entry is made after an intervening entry into, passage through, or departure from any other foreign territory or territorial waters, to obtain a written permit from the Commander, Seventh Coast Guard District, or the District Commander's designee.

This rule does not apply to foreign flag vessels. The security zone removed by this rule applied to foreign flag vessels, except those in innocent passage. The security zone removed by this rule applied to vessels less than 50 meters (165 feet) in length. This rule applies to U.S. vessels, and vessels without nationality, less than 100 meters (328 feet) in length. U.S. vessels 100 meters and longer that enter Cuban territorial waters generally hold appropriate export licenses. Thus, this rule covers those vessels that generally do not hold appropriate export licenses. Such vessels must apply for and hold those licenses as a condition precedent to apply for a Coast Guard permit.

Further, Proclamation 7757 provides that the Secretary is authorized to receive assistance from other government agencies as necessary to carry out its purpose. Coupled with 14 U.S.C. 141, Proclamation 7757 provides the direction and authority to the Coast Guard to assist other agencies in the enforcement of the economic sanctions and receive assistance from other agencies in the enforcement of this rule.

Accordingly, in order for covered vessels to receive a Coast Guard permit to enter Cuban territorial waters, the Coast Guard will require the permit application to include a copy of a valid

<sup>1</sup> See 46 U.S.C. Chapters 121 and 123; 46 U.S.C. App. 1903; Art. 6, United Nations Convention on the Law of the Sea (UNCLOS).

and applicable license issued to the applicant by the U.S. Department of Commerce, Bureau of Industry and Security (BIS), pursuant to the Export Administration Regulations, 15 CFR chapter VII, subchapter C, parts 730–774 for the export of the vessel to Cuba. The Coast Guard will also require the permit application to include a copy of a valid and applicable specific license issued by the U.S. Department of the Treasury (OFAC), pursuant to the Cuban Assets Control Regulations, 31 CFR part 515, authorizing the applicant's travel-related transactions in Cuba. Applicants who do not require such an OFAC specific license are required to make a written certification to that effect identifying which OFAC general license applies or explaining why no OFAC license is required. Applications must provide the documentation required for each person to which this rule applies on board the particular vessel. The Coast Guard will work closely with OFAC and BIS to ensure alignment of effort in the enforcement of the economic sanctions against Cuba. This will allow the Coast Guard to ensure that its decisions on permits for entry into Cuban territorial waters are made in a manner which is consistent with the decisions of those agencies responsible for economic sanctions enforcement.

This rule removes the security zone around the Florida peninsula, because it is no longer necessary as the new rule applies nation-wide to all covered vessels and persons within U.S. territorial waters.

This rule will continue so long as the national emergency and regulatory authority as declared by the President in Presidential Proclamation 6867, and expanded in scope by Proclamation 7757, continues pursuant to section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)). The Coast Guard intends to publish annually in the **Federal Register** a notice of the status of this rule.

#### Discussion of Rule

This rule creates a new 33 CFR part 107 to establish a place in the CFR for nation-wide vessel and facility control measures and limited access areas. This new part is placed within subchapter H of chapter I, title 33, as a follow-on to the national maritime security rules published last year (68 FR 60448; 68 FR 39240). The Coast Guard intends that this and any other nation-wide measures regarding control of vessels or facilities, or the establishment of nation-wide limited access areas (security zones, safety zones, or other types of limited or controlled access areas), for purposes of maritime security, will be

placed in new 33 CFR part 107. Local and regional regulated navigation areas and limited access areas will continue to be placed in 33 CFR part 165.

The Coast Guard has determined that controlling entry of U.S. vessels, and vessels without nationality, into Cuban waters and controlling the departure of U.S. vessels, and vessels without nationality, bound for Cuba is necessary to protect the safety of United States citizens and residents, to improve enforcement of the economic sanctions against the Government of Cuba, and to prevent threatened disturbance of the international relations of the United States.

This rule applies to vessels of the United States (individually or corporately owned), and vessels without nationality, less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of vessels of the United States and vessels without nationality, located within U.S. territorial waters that depart those waters and thereafter enter Cuban territorial waters, regardless of whether such entry is made after an intervening entry into, passage through, or departure from any other foreign territory or territorial waters. Accordingly, the rule continues to apply to a covered vessel that departs U.S. territorial waters and enters the territorial waters of a third country before entering Cuban waters. The rule may be enforced against U.S. vessels or vessels without nationality that have operated within the U.S. 12 nautical mile territorial sea or inland waters before entering Cuban territorial waters. This rule does not apply to warships, foreign vessels, other public vessels operated for non-commercial purposes, or U.S. vessels entering Cuban territorial waters under force majeure. If necessary, pursuant to the authority in Proclamation 7757, the Coast Guard in the future may issue rules or regulations that apply to other vessels subject to the jurisdiction of the United States.

Vessels and persons to which the rule applies cannot move within or depart U.S. territorial waters and thereafter enter Cuban territorial waters without a Coast Guard permit. If issued, the permit must be kept on board the vessel. The Coast Guard may issue appropriate orders to control the movement and anchorage of all vessels covered by the rule. Additionally, the Coast Guard may remove all persons not specifically authorized by the Coast Guard to go or remain on board covered vessels, may place guards on covered vessels, and may take full or partial possession or control of any such vessel or part

thereof. Such actions to be taken are in the discretion of the Coast Guard as deemed necessary to ensure compliance with the provisions of the rule or any other order issued under the authority of the rule. Nothing in this rule precludes the Coast Guard, or any other agency, from taking action pursuant to any other applicable authority.

Even if a covered vessel has not applied for a permit, where there is an articulable basis to believe that the vessel intends to enter Cuban territorial waters, as a condition of moving in or departing from U.S. territorial waters, the Coast Guard has the discretion to require the owner, agent, master, officer, or person in charge, or any member of the crew of any covered vessel to provide verbal assurance to the Coast Guard that the vessel will not enter Cuban territorial waters. Likewise, the Coast Guard may require the owners, agents, masters, officers, or persons in charge of covered vessels to identify all persons on board the vessel and provide verbal assurances that all persons on board have received actual notice of these regulations. The failure of an owner, agent, master, officer, or person in charge, or any member of the crew of any vessel (including all auxiliary vessels) to provide requested verbal assurances shall not be used as the sole basis for seizing the vessel for forfeiture under this rule. Additionally, where there is an articulable basis to believe that a covered vessel located in U.S. territorial waters intends to enter Cuban territorial waters, the Coast Guard may require that the vessel apply for a permit as a condition of departure.

Applicants may apply to the Chief of Operations, Seventh Coast Guard District in Miami, FL, for a permit. Applicants may mail or fax the required information and documentation for a permit to the Chief of Operations, Seventh Coast Guard District in Miami, FL. The Commander, Seventh Coast Guard District, may make available to the public documents and other information that may aid the public in the application process. There is no required form.

Even if an applicant provides all of the information and documentation required by this rule in the permit application, the Coast Guard nevertheless will consider any available information that reasonably supports a conclusion that entry by the vessel or persons on board into Cuban territorial waters might: Subject the vessel or persons on board to the use of excessive or deadly force by the Government of Cuba; result in unauthorized transactions; or threaten a disturbance of the international relations of the

United States. In such a case, the Coast Guard intends to consult with other appropriate agencies prior to taking final agency action.

Applicants denied permits may request the Seventh Coast Guard District Commander to reconsider that decision. The Seventh District Commander's decision on a request for reconsideration will constitute final agency action.

Covered vessels and persons will be held to a standard of strict civil liability for any entry into Cuban territorial waters without a permit, or for failure to maintain the permit on board the vessel. Noncompliance with the permit application and permit carriage provisions may result in a civil penalty of not more than \$25,000 for each day of violation. The Coast Guard will not impose strict liability if the failure to obtain or carry a permit results primarily from an act of war, force majeure, or the negligence of the United States.

Although the applicable statute (50 U.S.C. 192) provides for strict criminal liability for non-compliant owners, agents, masters, officers, persons in charge and members of the crew, the Coast Guard has chosen not to include such criminal penalties for violation of the rule without the addition of scienter. Accordingly, any person who knowingly fails to comply with any requirements of, or order issued pursuant to, this rule, or knowingly obstructs or interferes with the exercise of any power conferred by this rule may be subject to criminal penalties of imprisonment of not more than 10 years, a penalty of not more than \$10,000, seizure and forfeiture of the vessel, and a civil penalty of not more than \$25,000 for each day of violation. Making false statements or writings may subject the actor to imprisonment for not more than five years or a fine, or both, pursuant to 18 U.S.C. 1001.

The civil and criminal penalties provided for in this rule are separate from and in addition to any enforcement action that any other agency may seek for violations of the statutes and regulations administered by such agencies.

### Regulatory Evaluation

This rule is a "significant regulatory action" under section 3(f)(4) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. This rule implements Presidential Proclamation 7757, which expanded the scope of the national emergency and authority to regulate the

anchorage and movement of vessels into Cuban territorial waters.

Based on the limited number of boarding events within the last year in the geographic area most affected by this rule, we expect the economic impact of this rule to be minimal. In that geographic area, the Coast Guard boards on average 807 vessels each year that would be affected by this rule. The vast majority of these vessels have permits to be in Cuban waters. On average, each boarding takes 90 minutes for officers to check for permits and other documents. The Coast Guard estimates the total annual cost to vessel owners from these boarding operations to be \$66,577.

This rule is "significant" under the regulatory policies and procedures of the Department of Homeland Security. The requirements of this rule, although applicable nation-wide, are necessary to protect the safety of lives and property at sea, improve enforcement of the economic sanctions against Cuba, and to prevent threatened disturbance of the international relations of the United States. The requirements in this rule for persons or vessels are necessary to the national interest as described above and to prevent threatened disturbance of the international relations of the United States. This rule will be enforced so long as the national emergency and regulatory authority established in Proclamation 6867, and expanded in scope by Proclamation 7757, continues.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), 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. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act.

### 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 Lieutenant Commander Brad Kieserman, Office of Law Enforcement (G–OPL), U.S. Coast Guard Headquarters, 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 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 a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

*Title:* Unauthorized entry into Cuban territorial waters.

*OMB Control Number:* 1625–0106.

*Summary of the Collection of Information:* The Coast Guard requires applicant identifying information, vessel registry, and federal export and transaction license information from applicants and U.S. vessels that apply for permits to enter Cuban territorial waters. This rule will amend 33 CFR subchapter H to require:

Applicants must report the following information via facsimile or mail, or by other means prescribed by the District Commander for the convenience of the applicant:

- a. The name, address, and telephone number of the applicant.
- b. A copy of the valid vessel registration.
- c. A copy of a valid and applicable export license issued to the applicant by the U.S. Department of Commerce, Bureau of Industry and Security, pursuant to the Export Administration Regulations, 15 CFR chapter VII, subchapter C, parts 730–774 for the export of the vessel to Cuba.
- d. A copy of a valid and applicable specific license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), pursuant to the Cuban Assets Control

Regulations, 31 CFR part 515, authorizing the applicant's travel-related transactions in Cuba. Applicants who do not require such an OFAC specific license shall make a written certification to that effect identifying which OFAC general license applies or explaining why no OFAC license is required.

e. Applications must provide the documentation required above for each person to which this rule applies on board the particular vessel.

The changes will be in effect through January 31, 2005.

**Need for Information:** To provide for the safety of United States citizens and residents, and their property, improve enforcement of the economic sanctions against Cuba, and to prevent threatened disturbances of the international relations of the United States.

**Proposed use of Information:** This information is required to enhance maritime security, control vessel anchorages and movement, and enforce regulations.

**Description of the Respondents:** The respondents are owners, agents, masters, officers, persons in charge or other applicants associated with U.S. vessels, and vessels without nationality, less than 100 meters (328 feet) in length that may enter Cuban territorial waters.

**Number of Respondents:** The existing OMB-approved collection number of respondents is zero (0). This rule will increase the number of respondents by 532 to a total of 532.

**Frequency of Response:** The existing OMB-approved collection annual number of responses is zero (0). This rule will increase the number of responses by 532 to a total of 532.

**Burden of Response:** The existing OMB-approved collection burden of response is zero (0). This rule will increase the burden of response by 15 minutes (0.25 hours) to a total of 15 minutes (0.25 hours).

**Estimate of Total Annual Burden:** The existing OMB-approved collection total annual burden is zero (0). This rule will increase the total annual burden by 133 hours to a total of 133 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding this rule, we asked for "emergency processing" of our request. We received OMB approval for the collection of information on July 2, 2004. It is valid through January 31, 2005.

We ask for public comment on the collection of information to help us

determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by August 9, 2004.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. We received OMB approval for the collection of information on July 2, 2004. It is valid through January 31, 2005.

### Federalism

A rule has implications 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 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.

### 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraphs (34)(a), (d) and (g) of the Instruction, from further environmental documentation. This rule establishes procedures for U.S. vessels to receive permission to depart U.S. waters and enter Cuban waters and concerns the documentation and inspection of such vessels.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

### List of Subjects

#### 33 CFR Part 107

Harbors, Facilities, Marine safety, Maritime security, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Vessels, Waterways.

### 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 adds part 107 to subchapter H of chapter I, title 33 of the Code of Federal Regulations, and amends 33 CFR part 165 as follows:

■ 1. Add part 107 to subchapter H of chapter I, title 33 of the Code of Federal Regulations to read as follows:

## PART 107—NATIONAL VESSEL AND FACILITY CONTROL MEASURES AND LIMITED ACCESS AREAS

### Subpart A—[Reserved]

### Subpart B—Unauthorized Entry Into Cuban Territorial Waters

Sec.	
107.200	Definitions.
107.205	Purpose and delegation.
107.210	Applicability.
107.215	Regulations.
107.220	Permits.
107.225	Appeals.
107.230	Enforcement.
107.240	Continuation.

**Authority:** 50 U.S.C. 191, 192, 194, 195; 14 U.S.C. 141; Presidential Proclamation 6867, 61 FR 8843, 3 CFR, 1996 Comp., p. 8; Presidential Proclamation 7757, 69 FR 9515 (March 1, 2004); Secretary of Homeland Security Order 2004-001; Department of Homeland Security Delegation No. 0170.1; and 33 CFR 1.05-1.

### Subpart A—[Reserved]

### Subpart B—Unauthorized Entry Into Cuban Territorial Waters

#### § 107.200 Definitions.

Unless otherwise specified, as used in this subpart:

*Auxiliary vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water attached to, or embarked in, another vessel to which this subpart applies.

*Cuban territorial waters* means the territorial sea and internal waters of Cuba determined in accordance with international law.

*Owner, agent, master, officer, or person in charge* means the persons or entities that maintain operational control over any vessel subject to the requirements of this subpart.

*U.S. territorial waters* has the same meaning as provided in 50 U.S.C. 195.

*Vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, including auxiliary vessels.

*Vessel of the United States* means—

(1) a vessel documented under chapter 121 of title 46 or a vessel numbered as provided in chapter 123 of that title;

(2) a vessel owned in whole or part by—

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other legal entity, created and authorized to own vessels under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of United States law;

(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation;

(4) A vessel without nationality as defined in 46 U.S.C. Appendix 1903(c)(2)–(3); or

(5) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas.

#### § 107.205 Purpose and delegation.

The purpose of this subpart is to implement Presidential Proclamation 7757, and Secretary of Homeland Security Order 2004-001. All powers and authorities granted to officers of the Coast Guard by this subpart may be delegated to other officers and agents of the Coast Guard unless otherwise prohibited by law.

#### § 107.210 Applicability.

(a) This subpart applies to:

(1) Vessels of the United States less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels, that depart U.S. territorial waters and thereafter enter Cuban territorial waters, regardless of whether such entry is made after an intervening entry into, passage through, or departure from any other foreign territory or territorial waters;

(2) Vessels of the United States less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels that are located at or get underway from a berth, pier, mooring, or anchorage in U.S. territorial waters, or depart U.S. territorial waters with the intent to enter Cuban territorial waters; and

(3) Any person who knowingly fails to comply with this subpart or order given under this subpart, or knowingly obstructs or interferes with the exercise of any power conferred by this subpart.

(b) This subpart does not apply to: Foreign vessels, as defined by 46 U.S.C. 2101(12), public vessels, as defined by 46 U.S.C. 2101(24) operated for non-commercial purposes, or vessels of the United States entering Cuban territorial waters under force majeure.

#### § 107.215 Regulations.

(a) Each person or vessel to which this subpart applies may not get underway or depart from U.S. territorial waters without a written permit from the Commander, Seventh Coast Guard District, or the District Commander's designee. Permits may be obtained pursuant to the process established in § 107.220. The owner, agent, master, or person in charge of the vessel must maintain the written permit for the vessel on board the vessel.

(b) Each person or vessel to which this subpart applies must obey any oral or written order issued by a Coast Guard Area or District Commander, or their designees, who may issue oral or written orders to control the anchorage or movement of such vessels and persons. Designees include Captains of the Port, and commissioned, warrant and petty officers of the Coast Guard.

(c) No person or vessel to which this subpart applies may obstruct or interfere with the exercise of any power conferred by this subpart.

(d) Coast Guard commissioned, warrant and petty officers may go or remain on board a vessel subject to this subpart, may place guards on the subject vessel, may remove all persons not specifically authorized by the Coast

Guard to go or remain on board the subject vessel, and may take full or partial possession or control of any such vessel or part thereof, or person on board. Such actions to be taken are in the discretion of the Coast Guard Area or District Commander, or their designees, as deemed necessary to ensure compliance with this subpart and any order given pursuant thereto.

(e) Where there is a reasonable, articulable basis to believe a vessel to which this subpart applies intends to enter Cuban territorial waters, any Coast Guard commissioned, warrant, or petty officer may require the owners, agents, masters, officers, or persons in charge, or any member of the crew of any such vessel to provide verbal assurance that the vessel will not enter Cuban territorial waters as a condition for a vessel to get underway from a berth, pier, mooring, or anchorage in U.S. territorial waters, or to depart from U.S. territorial waters. A Coast Guard commissioned, warrant, or petty officer may require the owners, agents, masters, officers, or persons in charge of the vessel to identify all persons on board the vessel and provide verbal assurances that all persons on board have received actual notice of these regulations. The failure of an owner, agent, master, officer, or person in charge, or any member of the crew of any vessel (including all auxiliary vessels) to which this subpart applies to provide requested verbal assurances shall not be used as the sole basis for seizing the vessel for forfeiture under this subpart.

(f) The provisions of this subpart are in addition to any powers conferred by law upon Coast Guard commissioned, warrant, or petty officers, and not in limitation of any powers conferred by law or regulation upon such officers, or any other officers of the United States.

#### § 107.220 Permits.

(a) Applications for a permit may be obtained by writing or calling the Chief of Operations at Commander, Seventh Coast Guard District (o), 909 SE First Avenue, Miami, FL 33131, telephone (305) 415-6920, or by such other means as the District Commander may make available to the public. The completed application may be returned via regular mail or facsimile to the Chief of Operations at Commander, Seventh Coast Guard District (o), 909 SE First Avenue, Miami, FL 33131, facsimile (305) 415-6925, or by other means prescribed by the District Commander for the convenience of the applicant.

(b) All applications must be written in English and legible.

(c) The information and documentation in this paragraph must

be provided with the application in order for it to be complete and considered by the Coast Guard:

(1) The name, address, and telephone number of the applicant;

(2) A copy of the valid vessel registration;

(3) A copy of a valid and applicable license issued to the applicant by the U.S. Department of Commerce, Bureau of Industry and Security, pursuant to the Export Administration Regulations, 15 CFR chapter VII, subchapter C, parts 730-774 for the export of the vessel to Cuba; and

(4) A copy of a valid and applicable specific license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), pursuant to the Cuban Assets Control Regulations, 31 CFR part 515, authorizing the applicant's travel-related transactions in Cuba. Applicants who do not require such an OFAC specific license shall make a written certification to that effect identifying which OFAC general license applies or explaining why no OFAC license is required.

(d) Such applications must provide the documentation required by § 107.220(c) for each person to which this subpart applies on board the particular vessel.

(e) Upon receiving an application for a permit, the Seventh Coast Guard District Commander (o) has ten (10) calendar days from the receipt of the application to decide whether the application is complete and, if so, whether a permit will be issued or denied. Applicants will be notified in writing of the decision to issue or deny a permit. Incomplete applications will be returned to the applicant, along with the reasons why such application was deemed incomplete.

#### § 107.225 Appeals.

(a) Upon written notification by the Coast Guard that an application has been denied, the applicant may request the Seventh Coast Guard District Commander to reconsider. The request to reconsider must be in writing, must be made within five (5) business days from the date of receipt of the initial denial, and must contain complete supporting documentation and evidence which the applicant wishes to have considered. Requests for reconsideration must be mailed to Commander, Seventh Coast Guard District (d), 909 SE First Avenue, Miami, FL 33131.

(b) Upon receipt of the request to reconsider, the Seventh Coast Guard District Commander may direct a representative to gather and submit documentation or other evidence,

which, in the judgment of the Seventh District Commander, would be necessary or helpful to a resolution of the request. If gathered and submitted, a copy of this documentation and evidence shall be made available to the applicant. The applicant shall be afforded five (5) business days from the date of receipt of documentation and evidence gathered by the Seventh Coast Guard District Commander's representative to submit rebuttal materials. On or before the fifteenth (15th) calendar day following submission of all materials, the Seventh Coast Guard District Commander shall issue a ruling, in writing, on the request to reconsider. The ruling may reverse the initial denial, or, if the denial is upheld, must contain the specific basis for denial of the application upon reconsideration.

(c) The Seventh Coast Guard District Commander's denial of a request for reconsideration taken under paragraph (b) of this section constitutes final agency action.

#### § 107.230 Enforcement.

(a) *Unauthorized departure or entry, or both.*

(1) Vessels and persons to whom this subpart applies, as described in § 107.210(a)(1), that do not comply with § 107.215(a), or any order issued pursuant to this subpart may be subject to a civil penalty of not more than \$25,000 for each day of violation.

(2) Vessels and persons to whom § 107.230(a)(1) applies shall be held to a standard of strict liability for any entry into Cuban territorial waters without a permit or for failure to maintain the permit for the vessel on board the vessel as required under this subpart, except that strict liability will not be imposed if the failure to obtain or carry a permit results primarily from an act of war, force majeure, or the negligence of the United States.

(b) *Knowing failure to comply.* Any person to whom this subpart applies as described in §§ 107.210(a)(2) or (a)(3) who knowingly fails to comply with this subpart or order given under this subpart, or knowingly obstructs or interferes with the exercise of any power conferred by this subpart may be subject to:

(1) Imprisonment for not more than 10 years;

(2) A monetary penalty of not more than \$10,000;

(3) Seizure and forfeiture of the vessel; and

(4) A civil penalty of not more than \$25,000 for each day of violation.

(c) *False Statements.* Violation of 18 U.S.C. 1001 may result in imprisonment

for not more than five years or a fine, or both.

(d) *Other enforcement.* The civil penalties provided for in this subpart are separate from and in addition to any enforcement action that any other agency may seek for violations of the statutes and regulations administered by such agencies.

**§ 107.240 Continuation.**

This subpart will continue to be enforced so long as the national

emergency with respect to Cuba, and the emergency authority relating to the regulation of the anchorage and movement of vessels declared in Proclamation 6867, and expanded in scope by Proclamation 7757, continues.

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 2. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

**§ 165.T07–013 [Removed].**

■ 3. Remove § 165.T07–013.

Dated: July 2, 2004.

**Thomas H. Collins,**

*Admiral, U.S. Coast Guard Commandant.*

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