



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2017-0670

RIN 1625-AA87

Security Zone; Atlantic Ocean, Ft. Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters of the Atlantic Ocean for a United States Navy exercise. There will be a zone approximately 4 nautical miles wide extending from .75 nautical miles off the beach to 4 nautical miles offshore. The zone will begin approximately .4 nautical miles south of Port Everglades Inlet. The security zone is needed to protect personnel, vessels, and the surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Miami.

DATES: This rule is effective without actual notice from 5 a.m. to 8 p.m. daily from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through July 21, 2017. For the purposes of enforcement, actual notice will be used from 5 a.m. to 8 p.m. daily from July 8, 2017 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Mara Brown, U.S. Coast Guard; telephone 305-535-4317, email Mara.J.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of this event until two days prior to the exercise and there is an immediate need to protect the security of the naval vessels, the public, and the surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other causes of similar nature. It is impracticable to publish an NPRM because the zone must be established by July 8, 2017.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective

date of this rule would be impracticable because immediate action is needed to respond to the potential security risks associated with naval exercises.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Miami (COTP) has determined the potential security concerns associated with naval exercises starting July 8, 2017. This rule is needed to protect naval vessels, the public, and the surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature while the exercise is occurring.

IV. Discussion of the Rule

This rule establishes a security zone from 5 a.m. until 8 p.m. daily from July 8, 2017 through July 21, 2017, while the Navy is performing the exercise. The security zone will cover all navigable waters approximately in an area 4 nautical miles wide extending from .75 nautical miles off the beach to 4 nautical miles offshore. The zone will begin approximately .4 nautical miles south of Port Everglades Inlet. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs

through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Coast Guard has made a determination this rule is not a significant regulatory action. This regulatory action determination is based on the size, durations and location of the security zone. The zone is only 4 nautical miles wide extending from .75 nautical miles off the beach to 4 nautical miles offshore. Vessel traffic will be able to safely transit around the security zone without significant diversion.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone that will prohibit entry within certain waters of the Atlantic Ocean in Ft. Lauderdale, Florida, in order to protect the safety of life and property on the waters while the exercise is occurring. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07- 0670 to read as follows:

§ 165.T07-0670 Security Zone; United States Navy Exercise, Ft. Lauderdale, FL.

(a) Regulated area. The following regulated area is established as a security zone: all waters starting at point 1 in position 26°05'03"N 80°05'42"W; thence east to point 2 in position 26°05'03"N 80°02'04"W; thence south to point 3 in position 26°00'57"N 80°02'25"W; thence west to point 4 in position 26°00'57"N 80°06'04"W; thence north back to origin.

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

- (c) Regulations. All persons and vessels are prohibited from entering, transiting through,

anchoring in, or remaining within the security zone without authorization from the Captain of the Port Miami or a designated representative.

- (d) Effective and enforcement dates. This rule is effective daily from 5 a.m. until 8 p.m. on July 8, 2017 through July 21, 2017, unless cancelled sooner by the Captain of the Port. This rule will be enforced with actual notice by the U.S. Coast Guard representative on scene while operations associated with the naval exercise are in progress.

Dated: July 7, 2017

M. M. Dean,

Captain, U.S. Coast Guard,

Captain of the Port Miami

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