



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0514]

RIN 1625-AA87

### Security Zone; Surfside Building Collapse, Surfside, FL

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary security zone for certain navigable waters of the Atlantic Ocean near the town of Surfside, Florida. The security zone will cover all navigable waters from approximately one-half nautical mile north and south of the Champlain Towers South (accident site) and 500 yards offshore. This action is necessary to prevent vessels from approaching and possibly interfering with search and rescue operations at the Champlain Towers South in Surfside, FL. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Miami or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through August 31, 2021. For the purposes of enforcement, actual notice will be used from July 1, 2021, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0514 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Omar Beceiro, Waterways Management Division, U.S. Coast Guard; telephone: (305) 535-4317, email: Omar.Beceiro@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
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 local authorities asked the Coast Guard to establish the security zone within 24 hours of the request. A delay in promulgating this rule would be impracticable because a security zone is required by July 1, 2021, to prevent vessels from approaching and possibly interfering with search and rescue operations at the Champlain Towers South in Surfside, FL. It would be contrary to public interest to postpone establishing the temporary security zone.

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 prevent interference of rescue operations at the Champlain Towers.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP Miami has determined the potential interference of search and rescue operations at the Champlain Towers will be a concern for rescue personnel. This security zone is necessary to protect rescue operations, personnel, and surrounding waterways adjacent to the accident site in Surfside, Florida.

### **IV. Discussion of the Rule**

This rule establishes a security zone from 7:00 p.m. on July 1, 2021, through 11:59 p.m. on August 31, 2021. The security zone will cover all navigable waters from approximately one-half nautical mile north and south of the Champlain Towers South (accident site) and 500 yards offshore. The duration of the zone is intended to protect personnel during search and rescue operations at the Champlain Towers. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Miami 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. 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).

This regulatory action determination is based on the size and location of the security zone. The security zone is limited in size and location as it will cover all

navigable waters from approximately one-half nautical mile north and south of the Champlain Towers South (accident site) and 500 yards offshore. Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the security zone without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period. Furthermore, the rule will allow vessels to seek permission to enter the zone. Persons and vessels may still enter, transit through, anchor in, or remain within the security zone during the enforcement period if authorized by the Captain of the Port Miami or a designated representative. The Coast Guard will provide advance notification of the security zone via a Broadcast Notice to Mariners, allowing mariners to make alternative plans or seek permission to transit the zone.

#### *B. Impact on Small Entities*

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

email 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.

*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 Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have 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 temporary security zone lasting approximately 60 days that will prohibit entry of persons or vessels during search and rescue operations at the Champlain Towers in Surfside, Florida. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

A Draft Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**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:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0514 to read as follows:

**§ 165.T07-0514 Security Zone; Surfside Building Collapse, Surfside, FL.**

(a) *Locations.* The temporary security zone is all waters of the Atlantic Ocean within the following points: beginning at Point 1 in position 25°52'54"N, 80°7'13"W; thence east to Point 2 in position 25°52'54"N, 80°6'56"W; thence south to Point 3 in position 25°51'52"N, 80°6'52"W; thence west to Point 4 in position 25°51'52"N, 80°7'8"W; thence back to origin at Point 1. The points are in North American Datum of 1983 (NAD 83).

(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 (COTP) Miami in the enforcement of the security zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the security zone unless authorized by the COTP Miami or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP Miami or designated representative.

(2) Persons who must notify or request authorization from the COTP may do so

by telephone at (305) 535-4313, or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This section will be enforced from 7:00 p.m. on July 1, 2021, through 11:59 p.m. on August 31, 2021.

Dated: July 1, 2021.

J. F. Burdian,  
Captain, U.S. Coast Guard,  
Captain of the Port Miami.

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