

(2) Except when stress of weather makes sailing impractical or hazardous, vessels shall not anchor in anchorage areas (A) or (C) for more than 48 hours unless expressly authorized by the Captain of the Port Houston-Galveston. Permission to anchor for longer periods may be obtained through Coast Guard Vessel Traffic Service Houston/Galveston on VHF-FM channels 12 (156.60 MHz) or 13 (156.65 MHz).

(3) No vessel with a draft of less than 22 feet may occupy anchorage (A) without prior approval of the Captain of the Port.

(4) No vessel with a draft of less than 16 feet may anchor in anchorage (C) without prior approval of the Captain of the Port Houston-Galveston.

(5) Vessels shall not anchor so as to obstruct the passage of other vessels proceeding to or from other anchorage spaces.

(6) Anchors shall not be placed in the channel and no portion of the hull or rigging of any anchored vessel shall extend outside the limits of the anchorage area.

(7) Vessels using spuds for anchors shall anchor as close to shore as practicable, having due regard for the provisions in paragraph (b)(5) of this section.

(8) Fixed moorings, piles or stakes, and floats or buoys for marking anchorages or moorings in place, are prohibited.

(9) Whenever the maritime or commercial interests of the United States so require, the Captain of the Port, or his authorized representative, may direct the movement of any vessel anchored or moored within the anchorage areas.

Dated: April 21, 2003.

**Roy J. Casto,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Eighth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD07-03-069]

RIN 1625-AA11

#### Regulated Navigation Area; Port Everglades Harbor, Fort Lauderdale, FL

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard is establishing a temporary regulated navigation area in Port Everglades Harbor, Fort Lauderdale, Florida to improve national security and safety of the harbor and increase the safety of law enforcement officers and high-risk vessels in the vicinity of Port Everglades Harbor. This temporary final rule establishes a slow speed zone in the harbor to control vessel speed and allow law enforcement vessels to control vessel movement in this waterway.

**DATES:** This rule is effective from 12:01 a.m. on Monday, April 28, 2003, until 12:01 a.m. on Monday, September 1, 2003. Comments and related material must be received on or before June 12, 2003.

**ADDRESSES:** You may mail comments and related material to Commanding Officer, U.S. Coast Guard, Marine Safety Office, 100 MacArthur Causeway, Miami, FL 33139. The Captain of the Port Miami maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

LTJG Jennifer Sadowski, Coast Guard Marine Safety Office Miami, Waterways Management at (305) 535-8701.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07-03-069], 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 self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

**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 and delaying the rule's

effective date is contrary to national security and public safety, because immediate action is necessary to protect the public, ports, and waters 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**.

**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. The President declared national emergencies following the September 11, 2001 terrorist attacks and has continued them, specifically: the continuing national emergency with respect to terrorist attacks, at 67 FR 58317 (Sep. 13, 2002); and continuing national emergency with respect to persons who commit, threaten to commit, or support terrorism, at 67 FR 59447 (Sep. 20, 2002). The President found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered since the terrorist attacks on the United States of September 11, 2001, and that such disturbances continue to endanger the Security of the United States, at Executive Order 13,273, 67 FR 56215 (Aug. 21, 2002). Following the attacks of well-trained and clandestine terrorists, national security and intelligence officials warned that future terrorist 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 Port Everglades because of the numerous high-capacity passenger vessels, vessels carrying hazardous cargo, critical infrastructure facilities including propane and petroleum processing facilities, and U.S. military vessels that utilize the port. Implementation of a port-wide slow speed regulated navigation area will greatly aid law enforcement officers in managing vessel traffic as any vessels not complying with the slow speed zone will quickly draw attention giving law enforcement more time to assess the situation and take appropriate action in protecting vessels within the port and port facilities. Prior to the creation of this temporary final rule, vessels were able to enter the harbor from sea at a high rate of speed and maintain a high rate of speed into the harbor until coming within close proximity of high capacity passenger vessels, vessels carrying hazardous cargo, critical

infrastructure facilities and U.S. military vessels that are often moored within an existing security zone. Law enforcement officers did not have sufficient time to react to vessels that failed to slow their speed prior to reaching the limits of the existing security zone. This regulated navigation area is necessary to protect the public, port, law enforcement officials, and waterways of the United States from potential subversive acts.

Nothing in this rule relieves vessels or operators from complying with all state and local laws in the regulated area, including manatee slow speed zones.

The Coast Guard intends to evaluate the need for making this temporary rule a permanent rule. We will consider comments solicited by this temporary rule and evaluate the effectiveness of this temporary rule in making that determination. The Coast Guard also anticipates publishing a notice of proposed rulemaking in the **Federal Register** to solicit additional comments. The notice and comment rulemaking process may be lengthy so this temporary rule is designed to be in effect until a final determination is made on whether a permanent rule is needed.

#### Discussion of Rule

The rule requires all vessels within the regulated navigation area to proceed at slow speed. Slow speed is defined as the speed at which a vessel proceeds when it is fully off plane, completely settled into the water and not creating excessive wake. This rule will minimize the potential national security hazards that could result from a vessel being permitted to transit through the harbor, in the vicinity of high capacity passenger vessels, vessels carrying hazardous cargo, critical infrastructure facilities and U.S. military vessels, at a high rate of speed and will facilitate law enforcement control of vessel movement.

The regulated navigation area is in the vicinity of Port Everglades Harbor, Fort Lauderdale, Florida, and includes all waters of the Atlantic Intracoastal Waterway and Port Everglades Harbor, from shore to shore, south of the 17th Street Bridge (at a line connecting 26°06.04'N, 080°07.17'W and 26°06.04'N, 080°07.05'W), north of the intersection of the Dania Cut Off Canal and the Intracoastal Waterway (latitude 26° 04.72'N) and west of a north-south line connecting red day board # 6 and green day board #7 at the entrance to Port Everglades Harbor (longitude 080°06.30'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 Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The regulated navigation area is narrowly tailored to protect the public, ports, and waterways of the United States, and watercraft are still permitted to transit through the regulated navigation area but must proceed at slow speed.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact upon a substantial number of small entities. 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. The regulated navigation area is narrowly tailored to protect the public, ports, and waterways of the United States, and vessels are still permitted to transit through the regulated navigation area but must proceed at slow speed.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Jennifer Sadowski at (305) 535–8701 for assistance in understanding and participating in this rulemaking.

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 no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### 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 this rule 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. Although 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.

## Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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.

## List of Subjects in 33 CFR Part 165

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

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

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

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

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

Department of Homeland Security Delegation No. 0170.

■ 2. Add temporary § 165.T07-069 to read as follows:

#### § 165.T07-069 Regulated Navigation Area; Port Everglades Harbor, Fort Lauderdale, Florida.

(a) *Location.* The following area in the vicinity of Port Everglades Harbor is a regulated navigation area: all waters of the Atlantic Intracoastal Waterway and Port Everglades Harbor, from shore to shore, south of the 17th Street Bridge (at a line connecting 26° 06.04'N, 080°07.17'W and 26°06.04'N, 080°07.05'W), north of the intersection of the Dania Cut Off Canal and the Intracoastal Waterway (latitude 26° 04.72'N) and west of a north-south line connecting red day board #6 and green day board #7 at the entrance to Port Everglades Harbor (longitude 080° 06.30'W).

(b) *Regulations.* Vessels entering and transiting through the regulated navigation area shall proceed at a slow speed. Nothing in this section alleviates vessels or operators from complying with all state and local laws in the area, including manatee slow speed zones.

(c) *Definition.* As used in this section, *slow speed* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A vessel is not proceeding at slow speed if it is:

- (1) On a plane;
- (2) In the process of coming up on or coming off of plane; or
- (3) Creating an excessive wake.

(d) *Effective period.* This rule is effective from 12:01 a.m. on Monday, April 28, 2003, until 12:01 a.m. on Monday, September 1, 2003.

Dated: April 25, 2003.

**James S. Carmichael,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-004]

RIN 1625-AA00

#### Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the Mission Creek Waterway in China Basin surrounding the construction site of the Fourth Street Bridge, San Francisco, California. This temporary safety zone is necessary to protect persons and vessels from hazards associated with bridge construction activities. The safety zone will temporarily prohibit usage of the Mission Creek Waterway surrounding the Fourth Street Bridge; specifically, no persons or vessels will be permitted to come within 100 yards of either side of the bridge or pass beneath the bridge during construction, unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 1 a.m. (PDT) on May 1, 2003, to 1 a.m. (PDT) on September 1, 2004.

**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 the docket [COTP San Francisco Bay 03-004] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Diana J. Cranston, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On March 19, 2003, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California in the **Federal Register** (68 FR 13244). The effective date for the safety zone for the first phase of this project was published as commencing on April 15, 2003, and lasting for 6 weeks. Due to a project delay, the safety zone for the first phase of this project will now commence on May 1, 2003, lasting for an 8-week period. The second