



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1091]

RIN 1625-AA00

Safety Zones; New Year's Eve Fireworks Displays within the Captain of the Port Miami Zone, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing three temporary safety zones during New Year's Eve fireworks displays on certain navigable waterways in Miami Beach and West Palm Beach, Florida. These safety zones are necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the three safety zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

ADDRESSES: Documents indicated in this preamble as being

available in the docket are part of docket USCG-2011-1091 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1091 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Lieutenant Jennifer S. Makowski Sector Miami Prevention Department, Coast Guard; telephone 305-535-8724, e-mail [Jennifer.S.Makowski@uscg.mil](mailto:Jennifer.S.Makowski@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final 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 necessary information regarding the fireworks displays until December 2, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks displays. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks displays.

For the same reason discussed above, 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.

#### Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064;

Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

#### Discussion of Rule

Multiple fireworks displays are planned for New Year's Eve celebrations throughout the Captain of the Port Miami Zone. The fireworks will be launched from barges and will explode over navigable waters of the United States.

The Coast Guard is establishing three temporary safety zones for New Year's Eve fireworks displays on Saturday, December 31, 2011 on navigable waters of the Captain of the Port Miami Zone. The three safety zones are listed below.

1. Miami Beach, Florida. All waters within a 374 yard radius around the barge from which the fireworks will be launched, located 275 yards east of Bay Front Park. This safety zone will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

2. Miami Beach, Florida. All waters within a 234 yard radius around the barge from which the fireworks will be launched, located 650 yards north east of Star Island. This safety zone will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

3. West Palm Beach, Florida. All waters within a 280

yard radius around the barge from which the fireworks will be launched, located 650 yards north of Royal Park Bascule Bridge. This safety zone will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the safety zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

#### Regulatory Analyses

We developed this rule after considering numerous

statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) the safety zones will be enforced for a total of 31 minutes; (2) vessel traffic in the areas are expected to be minimal during the enforcement period; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within any

of the safety zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding areas during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zones during the enforcement period if authorized by the Captain of the Port Miami or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on 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. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to

enter, transit through, anchor in, or remain within any of the three safety zones established by this regulation during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

#### 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 can better evaluate its effects on them and participate in the rulemaking process.

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.

### 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 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.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems

practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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 is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing three temporary safety zones, as described in paragraph 34(g) of the Instruction, that will be enforced for a total of 31 minutes. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

#### 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-1091 to read as follows:

§ 165.T07-1091 Safety Zones; New Year's Eve Fireworks Displays within the Captain of the Port Miami Zone, FL.

(a) Regulated Areas. The following regulated areas are safety zones, with the specific enforcement period for each safety zone. All coordinates are North American Datum 1983.

(1) Miami Beach, FL. All waters within a 374 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay in approximate position 25°46'19"N, 80°10'34"W. This regulated area will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

(2) Miami Beach, FL. All waters within a 234 yard

radius around the barge from which the fireworks will be launched, located on Biscayne Bay in approximate position 25°46'54"N, 80°08'42"W. This regulated area will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

(3) West Palm Beach, FL. All waters within a 280 yard radius around the pier from which the fireworks will be launched, located on the Intracoastal Waterway in approximate position 26°42'32"N, 80°02'48"W. This regulated area will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

(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 areas.

(c) Regulations.

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the regulated

areas may contact the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Effective Date. This rule is effective from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

Dated: December 6, 2011

C. P. SCRABA  
Captain, U.S. Coast Guard  
Captain of the Port Miami

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