

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0786]

RIN 1625-AA11

Regulated Navigation Area; Holiday Events; Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is amending the Columbus Day Weekend regulated navigation area on Biscayne Bay in Miami, Florida. The proposed amended regulation extends the Biscayne Bay regulated navigation enforcement period to New Year's Eve and Fourth of July events. It also expands the boundaries of the regulated navigation area south to Turkey Point, east to Elliott Key, west to the shoreline, and north to the Julia Tuttle Causeway. These regulations are necessary to protect the public during these events, which are periods that have historically had a significant concentration of persons and vessels on the waters of Biscayne Bay. To ensure the public's safety, all vessels within the regulated navigation area are: required to transit the regulated navigation area at no more than 15 knots; subject to control by the Coast Guard; and required to follow the instructions of all law enforcement vessels in the area.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0786 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Benjamin Colbert, Sector Miami Waterways Management Branch, U.S. Coast Guard; telephone 305-535-4317, email Benjain.R.Colbert@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

Recreational boating traffic on the waters of Biscayne Bay increases significantly during New Year's Eve, Fourth of July, and Columbus Day Weekend events. In recent years, recreational vessel speed, especially in crossing navigational channels, contributed to incidents that resulted in severe injury and death. This regulation seeks to increase public safety on the waters of Biscayne Bay during New Year's Eve, Fourth of July, and Columbus Day Weekend, holidays known for increased vessel traffic, by requiring vessels to travel at a maximum speed of 15 knots. It also subjects recreational vessels to the control by Coast Guard and local law enforcement authorities. On November 20, 2015 the Coast Guard published a notice of proposed rulemaking (NPRM)

titled Regulated Navigation Area; Columbus Day Weekend, New Year's Eve Events, and Fourth of July Events; Biscayne Bay, Miami, FL (80 FR 72663). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 21, 2015, we received no comments.

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

The legal basis for this rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 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. The District Seven Commander has determined that potential hazards associated with New Year's Eve, Fourth of July, and Columbus Day Weekend events pose a safety concern for anyone on the waters of Biscayne Bay. The purpose of this rule is to ensure safety of vessels and the navigable waters in Biscayne Bay before, during, and after the New Year's Eve, Fourth of July, and Columbus Day Weekend events.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published November 20, 2015. There are no significant changes in the regulatory text of this rule from the proposed rule in the NPRM. This rule establishes a regulated navigation area Columbus Day weekend, starting at noon on the Saturday before Columbus Day through 2 a.m. on Monday (the Columbus Day holiday); from 9 p.m. December 31st until 2 a.m. January 1st; and from 7 p.m. until 2 a.m. on the night Fourth of July fireworks are scheduled in Downtown Miami and Key Biscayne.

This regulated navigation area will encompass waters of Biscayne Bay between Julia Tuttle Causeway Bridge and Turkey Point in Homestead, Florida. The duration of the zone is

intended to ensure the safety of vessels and these navigable waters before, during, and after New Year's Eve, Fourth of July, and Columbus Day Weekend Holidays.

All vessels within the proposed regulated navigation area are: (1) Required to transit the regulated navigation area at no more than 15 knots; (2) subject to control by the Coast Guard; and (3) required to follow the instructions of all law enforcement vessels in the area.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

E.O.s 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. E.O. 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 E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Although the regulated navigation area covers most of Biscayne Bay, it is only enforced for a maximum of 38 hours during three holiday weekends. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 to provide notice of the zone and the regulations that allow vessels to enter the regulated navigation area.

### **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 received no comments from the Small Business Administration on this rulemaking. 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 regulated navigation area 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 (Pub. L. 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 E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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 is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### 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. Revise §165.779 to read as follows:

**§ 165.779 Regulated Navigation Area; Holiday Events; Biscayne Bay, Miami, FL.**

(a) Regulated area. The regulated navigation area encompasses all waters of Biscayne Bay between Julia Tuttle and Turkey Point contained within the following points: beginning at Point 1 in position 25°48'43"N, 80°08'29"W; thence south to Point 2 in position 25°29'07"N, 80°10'44"W; thence southwest to Point 3 in position 25°25'51"N, 80°12'00"W; thence west to Point 4 in position 25°25'51"N, 80°19'42"W; thence north to Point 5 in position 25°29'10"N, 80°20'58"W; thence north to Point 6 in position 25°37'35"N, 80°18'28"W; thence northeast to Point 7 in position 25°48'44"N, 80°11'17"W; thence back to origin. All coordinates are North American Datum 1983.

(b) Definitions. (1) 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.

(2) The term “Columbus Day” means the federally recognized holiday occurring annually on the second Monday in October.

(c) Regulations. All vessels within the regulated area are required to transit at no more than 15 knots, are subject to control by the Coast Guard, and must follow the instructions of designated representatives.

(d) Enforcement period. This section will be in enforced annually on Columbus Day weekend, starting at noon on the Saturday before Columbus Day through 2 a.m. on Monday (the Columbus Day holiday); from 9 p.m. December 31st until 2 a.m. January 1st; and from 7 p.m. until 2 a.m. on the night Fourth of July fireworks are scheduled in Downtown Miami and Key Biscayne.

Dated: June 2, 2016

S.A. Buschman

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District.

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