



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1067]

RIN 1625-AA00

Safety Zone; Hurricanes, Tropical Storms and Other Disasters in South Florida

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On June 5, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) to establish a temporary safety zone over certain navigable waters within the Sector Miami Captain of the Port (COTP) zone. This safety zone would allow the Coast Guard to restrict certain vessels from entering or transiting through certain navigable waters in the Miami River and Ports of Miami, Everglades, Palm Beach and Fort Pierce during periods of reduced or restricted visibility due to tropical storm force winds (39-73 mph/34-63 knots), hurricanes and/or other disasters. The Coast Guard proposes to publish this supplemental notice of proposed rulemaking (SNPRM) since considerable time has passed from the time when the initial NPRM was published, and because minor modifications have been made to the proposed rule. This SNPRM requests comments on the revised proposal.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-1067 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking contact Mr. Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard at (305) 535-4317, or by email at Omar.Beceiro@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, Purpose, and Legal Basis

A. Regulatory History and Information

The purpose of the proposed regulation is to ensure the safety of life on navigable waters of the United States by restricting movement of certain vessels in the event of severe weather conditions or disasters, including tropical storms and hurricanes. The COTP has determined reduced or restricted visibility and tropical storm force winds, which may occur during tropical storms, hurricanes and other disasters, constitute a safety concern for anyone within the proposed safety zone.

B. Discussion of Comments on NPRM and Changes to the Proposed Rule

On May 10, 2017, the Coast Guard published a NPRM titled “Safety Zone; Hurricanes and Other Disasters in South Florida” (see 82 FR 21742). The purpose of the proposed

regulation was to ensure the safety of life on navigable waters of the United States within the Sector Miami COTP zone by restricting movement of certain vessels in the event of severe weather conditions or disasters, including tropical storms and hurricanes. During the comment period, the Coast Guard received two comments, both in favor of the proposed regulations. One comment; however, also expressed several concerns. The commenter expressed a concern that the proposed rule did not clearly indicate that the COTP has the discretion to implement only those measures necessary given the specific circumstances of the emergency, rather than all measures being required. In addition, the commenter indicated the proposed rule should clearly state the application of restrictive measures would be applied only to those areas within the Sector Miami COTP zone affected by the hazardous condition. The commenter indicated that the proposed rule should not restrict operations in other areas of the COTP zones which are minimally or not at all affected. Finally, the commenter suggested that language in the section heading and text be modified to clearly indicate the regulation would be applicable when tropical storm-force winds are expected. To address these concerns, the Coast Guard made changes to the title and text of the proposed rule to include the use of “tropical storm” when referencing severe weather and clarified the COTP may restrict vessel movement only in ports affected by impending tropical storm force winds.

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary safety zone on certain navigable waters within the Sector Miami COTP zone in response to disasters and/or specified severe weather conditions (e.g. tropical storms and hurricanes) that would restrict movement of certain vessels when the COTP sets specific Port Conditions. The movement of certain vessel traffic within navigable waters of the Miami River and Ports of Miami, Everglades, Palm Beach and Fort

Pierce would be affected by this rule. Vessel movement restrictions would only apply to those ports within the Sector Miami COTP zone forecast to experience tropical storm force winds within a specific timeframe. The proposed rule would give the COTP flexibility in controlling and reconstituting vessel traffic during periods of heavy weather and expedite resumption of the Marine Transportation System following disasters and severe weather.

Port Conditions (WHISKEY, X-RAY, YANKEE, and ZULU) are standardized states of operation instituted by the COTP and shared with all major ports, facilities, and members of the Marine Transportation System. The intermodal and dynamic nature of the Marine Transportation System requires all parties to comply with safety and security procedures when faced with the challenges of tropical storms, hurricanes and other disasters.

Notice of Port Conditions and their requirements will be given via Marine Safety Information Bulletins, online at <http://homeport.uscg.mil/miami>, Broadcast Notice to Mariners, and Severe Weather Advisory Team meetings.

The revised regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 SNPRM has not been designated a “significant regulatory

action,” under Executive Order 12866. Accordingly, the SNPRM 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.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Port facilities and vessel traffic will be affected by this rule only during limited times when heavy weather is expected to make imminent landfall within the Sector Miami COTP zone. In addition, vessel traffic would be secured only during port conditions Yankee and Zulu, and only in ports potentially affected by tropical storm force winds. The Coast Guard would issue updates on homeport.uscg.mil/miami, via broadcasts on VHF-FM marine channel 16, and during Severe Weather Advisory Team meetings.

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 proposed rule would 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 IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a

comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 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 made a preliminary determination 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 proposed rule involves a safety zone of limited duration implemented during tropical storms, hurricanes or other heavy weather events. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration is 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 proposed 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this SNPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 proposes to amend 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. Revise § 165.785 to read as follows:

§ 165.785 Safety Zone; Hurricanes, Tropical Storms and Other Disasters in South Florida.

(a) *Regulated Areas.* All navigable waters, as defined in 33 CFR 2.36, within Sector Miami COTP zone, Miami, Florida, as described in 33 CFR 3.35-10, during specified conditions.

(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 COTP Miami, in the enforcement of the regulated areas.

(2) Port Condition WHISKEY means a condition set by the COTP when weather advisories indicate sustained tropical storm force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

(3) Port Condition X-RAY means a condition set by the COTP when weather advisories indicate sustained tropical storm force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) Port Condition YANKEE means a condition set by the COTP when weather advisories indicate that sustained tropical storm force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) Port Condition ZULU means a condition set by the COTP when weather advisories indicate that sustained tropical storm force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) **Regulations.** (1) *Port Condition WHISKEY.* All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm upon the anticipation of the setting of Port Condition X-RAY. Ports and waterfront facilities shall begin removing all debris and securing potential flying hazards. Container stacking plans shall be implemented. Waterfront facilities that are unable to reduce container-stacking height to no more than four high must submit a container stacking protocol to the COTP.

(2) *Port Condition X-RAY.* All vessels and port facilities shall ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Facilities shall continue to implement container-stacking protocol. Containers must not exceed four tiers, unless previously approved by the COTP. Containers carrying hazardous materials may not be stacked above the second tier. All oceangoing commercial vessels greater than 500-gross tons must prepare to depart ports and anchorages within the affected regulated area. These vessels shall depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in port. Vessels with

COTP's permission to remain in port must implement their pre-approved mooring arrangement. Terminal operators shall prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE*. Affected ports would be closed to inbound vessel traffic. All oceangoing commercial vessels greater than 500-gross tons must have departed designated ports within the Sector Miami COTP zone. Appropriate container stacking protocol must be completed. Terminal operators must terminate all cargo operations not associated with storm preparations. Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities shall continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act (MTSA).

(4) *Port Condition ZULU*. All port waterfront operations are suspended, except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) *Emergency Restrictions for Other Disasters*. Any natural or other disasters that are anticipated to affect the Sector Miami COTP zone will result in the prohibition of facility operations and commercial vessel traffic transiting or remaining in the affected port.

Dated: 23 September, 2019

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