

§ 234.16 Gambling.

Gambling in any form, or the operation of gambling devices, is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by the provisions of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*).

§ 234.17 Vehicles and traffic safety.

(a) *Open container of alcoholic beverage.*

(1) Each person within a vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(2) Carrying or storing a bottle, can, or other receptacle containing an alcoholic beverage that is open or has been opened, or whose seal is broken, or the contents of which have been partially removed, within a vehicle on the Pentagon Reservation is prohibited.

(3) This section does not apply to:

(i) An open container stored in the trunk of a vehicle or, if a vehicle is not equipped with a trunk, to an open container stored in some other portion of the vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(ii) An open container stored in the living quarters of a motor home or camper.

(4) For the purpose of paragraph (a)(3)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a vehicle.

(b) *Operating under the influence of alcohol, drugs, or controlled substances.*

(1) Operating or being in actual physical control of a vehicle is prohibited while:

(i) Under the influence of alcohol, a drug or drugs, a controlled substance or controlled substances, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(ii) The alcohol concentration in the operator's blood or breath is 0.08 gram or more of alcohol per 100 milliliters of blood or 0.08 gram or more of alcohol per 210 liters of breath. Provided, however, that if State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph (b).

(2) The provisions of paragraph (b)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(3) *Tests.*

(1) At the request or direction of an authorized person who has probable cause to believe that an operator of a vehicle within the Pentagon Reservation has violated a provision of paragraph (b)(1) of this section, the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol, drug, and controlled substance content.

(ii) Refusal by an operator to submit to a test is prohibited and may result in detention and citation by an authorized person. Proof of refusal may be admissible in any related judicial proceeding.

(iii) Any test or tests for the presence of alcohol, drugs, and controlled substances shall be determined by and administered at the direction of an authorized person.

(iv) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(4) *Presumptive levels.*

(i) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of this section. If the alcohol concentration in the operator's blood or breath at the time of the testing is less than the alcohol concentration specified in paragraph (b)(1)(ii) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(ii) The provisions of paragraph (b)(4)(i) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or drugs, or a controlled substance or controlled substances, or any combination thereof.

§ 234.18 Enforcement of parking regulations.

Parking regulations for the Pentagon Reservation shall be enforced in accordance with Department of Defense Administrative Instruction Number 88² and State law. A vehicle parked in any location without authorization, or parked contrary to the directions of posted signs or markings, shall be subject to removal at the owner's risk and expense, in addition to any

penalties imposed. The Department of Defense assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This section may be supplemented from time to time with the approval of the Director, Washington Headquarters Services, or his designee, by the issuance and posting of such parking directives as may be required, and when so issued and posted such directive shall have the same force and effect as if made a part thereof.

§ 234.19 Penalties and effect on other laws.

(a) Whoever shall be found guilty of willfully violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Whoever violates any rule or regulation enumerated in this part is liable to the United States for a civil penalty of not more than \$1,000.

(c) Nothing in this part shall be construed to abrogate any other Federal laws.

Dated: January 3, 1996.

L.M. Bynum,

*Alternate OSD Federal Register Officer,
Department of Defense.*

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[CGD07-95-073]

RIN 2115-AE84

Regulated Navigation Area Regulations; Fort Pierce, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area at the Peter P. Cobb bridge in Fort Pierce, Florida. This regulated navigation area is needed to protect all vessels from a safety hazard created by damage to the Peter P. Cobb bridge and associated debris in the surrounding area. Entry into this zone is prohibited unless authorized by the Captain of the Port, Miami, Florida.

EFFECTIVE DATES: This regulation is effective at 8 p.m. on December 27, 1995 and terminates at 12 p.m. on February 24, 1996.

² See footnote 1 to § 234.4(a).

FOR FURTHER INFORMATION CONTACT:

BMC J.L. Belk, USCG Marine Safety Office, Miami, Florida at (305) 536-5693.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are BMC J.L. Belk, Project Officer, USCG Marine Safety Office, and LTJG J. Diaz, Project Attorney, Seventh Coast Guard District Legal Office.

Background and Purpose

At approximately 4 p.m. on November 7, 1995, a vessel collided with the east side of the fender system of the Peter P. Cobb Bridge (also known as the South Section) on the Indian River South Section at Fort Pierce, Florida. The center section of the east fender system was destroyed leaving the bridge support piling unprotected. The concrete pilings of the center section of the fender system extend into the channel, creating a safety hazard. Construction crews are replacing the fender system which was destroyed.

A regulated navigation area has been established on the Indian River South Section which includes the area under the main span of the bridge extending 100 feet either side of the bridge within the main channel. This area has the following restrictions and conditions for vessel traffic.

All barge traffic must obtain permission from the Captain of the Port or his designated representative prior to transiting. Any barges allowed to transit the zone by the Captain of the Port will be required to meet the following conditions: the barge must be assisted by two tugs made fast fore and aft; tugs must be of adequate horsepower to fully maneuver the barge; and the zone shall be transited by barge traffic at slack water only. All other vessel traffic shall stay clear of the damaged section of the bridge and the repair work underway.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to prevent vessels from colliding with the bridge support pilings, causing potential danger to the public.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed under the principles and criteria contained in executive order 12612 and has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Section 2.B.2.e(34)(g) of Commandant Instruction M16475.1B that this action is categorically excluded from further environmental documentation. A categorical exclusion checklist and categorical exclusion determination

have been completed and are available for inspection and copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Safety measures, Waterways.

Regulations

For the reasons set out in the preamble the Coast Guard amends 33 CFR Part 165 as follows:

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, 160.5; and 49 CFR 1.46.

2. A new temporary § 165.T07-073 is added to read as follows:

§ 165.T07-073 Regulated Navigation Area; Indian River South Section, Peter P. Cobb Bridge, Fort Pierce, FL.

(a) *Location:* The following area is a regulated navigation area: All waters under the main bridge span extending 100 feet either side of the bridge within the main channel.

(b) *Regulations:* In accordance with general regulations in § 165.11 of this part, no vessel may operate within the regulated navigation area contrary to this regulation. All barge traffic must obtain permission from the Captain of the Port or his designated representative prior to transiting. Any barges allowed to transit the zone by the Captain of the Port will be required to meet the following conditions: the barge must be assisted by two tugs made fast fore and aft; tugs must be of adequate horsepower to fully maneuver the barge; and the zone shall be transited by barge traffic at slack water only. All other vessel traffic shall stay clear of the damaged section of the bridge and repair work underway. The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Effective dates:* This section is effective at 8 p.m. on December 27, 1995 and terminates at 12 p.m. on February 24, 1996.

Dated: December 27, 1995.

Roger T. Rufe, Jr.,

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

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