

agency whose actions affect the natural or cultural resources that are protected by an Marine Protected Area (MPA) shall identify such actions and shall avoid harm to the natural and cultural resources that are protected by an MPA. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

EPA has reviewed the Marine Managed Areas Inventory maintained by the National Oceanic and Atmospheric Administration and the U.S. Department of Commerce. The nearest MPA to either ODMDS is Biscayne National Park which is located greater than 20 nmi from the Port Everglades Harbor ODMDS and greater than 40 nmi from the Palm Beach Harbor ODMDS. Therefore, EPA has determined that no MPAs will be affected by this action.

#### List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: January 4, 2005.

J.I. Palmer, Jr.,

Regional Administrator for Region 4.

■ In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below:

#### PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

#### § 228.14 [Amended]

■ 2. Section 228.14 is amended by removing and reserving paragraphs (h)(3), (h)(4), and (h)(5).

■ 3. Section 228.15 is amended by adding paragraphs (h)(21) and (h)(22) to read as follows:

#### § 228.15 Dumping sites designated on a final basis.

\* \* \* \* \*

(h) \* \* \*

(21) Palm Beach Harbor, FL Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 26°47'30" N., 79°57'09" W.; 26°47'30" N., 79°56'02" W.; 26°46'30" N., 79°57'09" W.; 26°46'30" N., 79°56'02" W. Center coordinates are 26°47'00" N and 79°56'35" W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 525 to 625 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(22) Port Everglades Harbor, FL Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 26°07'30" N., 80°02'00" W.; 26°07'30" N., 80°01'00" W.; 26°06'30" N., 80°02'00" W.; 26°06'30" N., 80°01'00" W. Center coordinates are 26°07'00" N and 80°01'30" W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 640 to 705 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

\* \* \* \* \*

[FR Doc. 05-932 Filed 1-14-05; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket No. FEMA-7861]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**EFFECTIVE DATES:** The effective date of each community's scheduled

suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646-2878.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the

community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification letter addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No

environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

**§ 64.6 [Amended]**

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
<b>Region III</b>				
Delaware: Bethany Beach, Town of, Sussex County.	105083	November 12, 1971, Emerg; April 6, 1973, Reg; January 6, 2005, Susp.	1/6/2005 .....	1/6/2005
Dewey Beach, Town of, Sussex County .....	100056	June 18, 1982, Emerg; June 18, 1982, Reg; January 6, 2005, Susp.	.....do .....	Do.
South Bethany, Town of, Sussex County .....	100051	September 15, 1972, Emerg; October 6, 1976, Reg; January 6, 2005, Susp.	.....do .....	Do.
<b>Region V</b>				
Ohio: Brookville, City of, Montgomery County	390407	August 27, 1975, Emerg; October 15, 1981, Reg; January 6, 2005, Susp.	.....do .....	Do.
Dayton, City of, Montgomery County .....	390409	September 24, 1974, Emerg; December 4, 1979, Reg; January 6, 2005, Susp.	.....do .....	Do.
Miamisburg, City of, Montgomery County .....	390413	August 1, 1974, Emerg; June 15, 1981, Reg; January 6, 2005, Susp.	.....do .....	Do.
Trotwood, City of, Montgomery County .....	390417	July 2, 1974, Emerg; December 18, 1979, Reg; January 6, 2005, Susp.	.....do .....	Do.

\* do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

**David I. Maurstad,**  
*Acting Mitigation Division Director,  
 Emergency Preparedness and Response  
 Directorate.*  
 [FR Doc. 05-870 Filed 1-14-05; 8:45 am]  
**BILLING CODE 9110-12-P**

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 1**

[Docket No. OST-1999-6189]

RIN 9991-AA43

**Sensitive Security Information**

**AGENCY:** Office of the Secretary, Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary of Transportation (OST) is amending its regulations to reflect a change in Secretarial delegations. The Secretary is delegating to the Administrators of all Department of Transportation (DOT) agencies, the General Counsel, and the Director of Intelligence and Security the Secretary's authority to determine that information is Sensitive Security Information and available only under prescribed circumstances.

**EFFECTIVE DATE:** January 5, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Robert I. Ross, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW., Room 10102, Washington, DC 20590. Voice: (202) 366-9156. Fax: (202)366-9170. E-mail: [bob.ross@ost.dot.gov](mailto:bob.ross@ost.dot.gov).

**SUPPLEMENTARY INFORMATION:****Background**

For many years, DOT's Federal Aviation Administration (FAA) had statutory authority to prevent disclosure of information related to aviation security, termed "Sensitive Security Information (SSI)." In the leading case of *Public Citizen v. Federal Aviation Administration*, 300 U.S. App. DC 238; 988 F.2d 186 (DC Cir. 1993), the court set forth three aspects of this authority:

1. The statute under which FAA restricted disclosure of this information—49 U.S.C. App. 1357(d) (2) (1993)—qualified under Exemption 3 of the Freedom of Information Act (FOIA) as a "statute (A) [that] requires that the matters be withheld from the public in such a way as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." (5 U.S.C. 552(b) (3)). Hence, SSI may be withheld from public disclosure under FOIA.

2. The information may be withheld from the public rulemaking record in an informal rulemaking under 5 U.S.C. 553.

3. The information may be withheld from discovery in civil litigation.

In response to the attacks upon the United States on September 11, 2001, Congress enacted the Aviation and Transportation Security Act (Public Law 107-71, 115 Stat. 597 (2001)), which created in DOT a new Transportation Security Administration (TSA). 49 U.S.C. 114. That statute also transferred from the FAA to the TSA the authority to denominate information as SSI and expanded the scope of that authority to all modes of transportation. 49 U.S.C. 114(s). When Congress created the Department of Homeland Security (DHS) in the Homeland Security Act of 2002, (Public Law 107-295, 116 Stat. 2064 (2002)), it transferred TSA from DOT to DHS, continued its SSI authority, and gave similar authority to DOT, again as to all modes of transportation. See 49 U.S.C. 40119(b).

Both 49 U.S.C. 114(s) and 49 U.S.C. 40119(b) require, as did 49 U.S.C. App. 1357(d) (2), that the agency administering SSI authority promulgate regulations specifying the types of information qualifying for SSI treatment. FAA's regulations appeared at 14 CFR part 191; DOT's appear at 49 CFR part 15, Protection of Sensitive

Security Information; TSA's appear at 49 CFR part 1520, Protection of Sensitive Security Information.

Part 15 sets forth categories of information that qualify as SSI and authorizes the Secretary of Transportation to determine that specific items of information come within any of those categories. The purpose of this document is to delegate to all DOT Administrators this authority of the Secretary as to matters within their purview, with authority to redelegate within their own organizations; and to delegate this authority to the General Counsel and the Director of Intelligence and Security for all matters in DOT.

This rule is being published as a final rule and made effective on the date signed by the Secretary. As the rule relates to Departmental management, procedures, and practices, notice and comment on it are unnecessary under 5 U.S.C. 553(b)(3)(A). In addition, since this rule relates to internal procedures, there is good cause to make it effective in less than 30 days pursuant to 5 U.S.C. 553(d).

**Regulatory Analyses and Notices**

The Office of the Secretary of Transportation (OST) has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with this rule. Because this rule will only apply to internal DOT operations, OST certifies that this rule will not have a significant economic impact on a substantial number of small entities. OST also has determined that there are not sufficient federalism implications to warrant preparation of a federalism statement.

**Paperwork Reduction Act**

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

**Unfunded Mandates Reform Act of 1995**

OST has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

**List of Subjects in 49 CFR Part 1**

Authority delegations, Organizations and functions.

■ For the reasons set forth in the preamble, the Office of the Secretary amends 49 CFR part 1 as follows:

**PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES**

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

**Authority:** 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. 106-159, 113 Stat. 1748; Pub. L. 107-71, 115 Stat. 597.

■ 2. In § 1.45, add a new paragraph (a)(19) to read as follows:

**§ 1.45 Delegations to all Administrators.**

(a) \* \* \*

(19) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, relating to the determination that information is Sensitive Security Information within their respective organizations.

\* \* \* \* \*

■ 3. In § 1.57, add and reserve paragraphs (r) and (s) and add a new paragraph (t) to read as follows:

**§ 1.57 Delegations to General Counsel.**

\* \* \* \* \*

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, relating to the determination that information is Sensitive Security Information.

■ 4. In § 1.69, add a new paragraph (c) to read as follows:

**§ 1.69 Delegations to the Director of Intelligence and Security.**

\* \* \* \* \*

(c) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, relating to the determination that information is Sensitive Security Information.

Issued in Washington, DC, on this 5th day of January 2005.

**Norman Y. Mineta,**

*Secretary of Transportation.*

[FR Doc. 05-866 Filed 1-14-05; 8:45 am]

**BILLING CODE 4910-62-P**