

**§ 778.114 Fluctuating workweek method of computing overtime.**

(a) The fluctuating workweek may be used to calculate overtime compensation for a nonexempt employee if the following conditions are met:

(1) The employee works hours that fluctuate from week to week;

(2) The employee receives a fixed salary that does not vary with the number of hours worked in the workweek, whether few or many;

(3) The amount of employee's fixed salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours the employee works is greatest;

(4) The employee and the employer have a clear and mutual understanding that the fixed salary is compensation (apart from overtime premiums and any bonuses, premium payments, or other additional pay of any kind not excludable from the regular rate under section 7(e)(1) through (8) of the Act) for the total hours worked each workweek regardless of the number of hours; and

(5) The employee receives overtime compensation, in addition to such fixed salary and any bonuses, premium payments, and additional pay of any kind, for all overtime hours worked at a rate of not less than one-half the employee's regular rate of pay for that workweek. Since the salary is fixed, the regular rate of the employee will vary from week to week and is determined by dividing the amount of the salary and any non-excludable additional pay received each workweek by the number of hours worked in the workweek. Payment for overtime hours at not less than one-half such rate satisfies the overtime pay requirement because such hours have already been compensated at the straight time rate by payment of the fixed salary and non-excludable additional pay. Payment of any bonuses, premium payments, and additional pay of any kind is not incompatible with the fluctuating workweek method of overtime payment, and such payments must be included in the calculation of the regular rate unless excludable under section 7(e)(1) through (8) of the Act.

(b) The application of the principles in paragraph (a) of this section may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose work hours never exceed 50 hours in a workweek, and whose salary of \$600 a week is paid with the understanding that it constitutes the employee's compensation (apart from overtime

premiums and any bonuses, premium payments, or other additional pay of any kind not excludable from the regular rate under section 7(e)(1) through (8)) for all hours worked in the workweek.

(1) *Example.* If during the course of 4 weeks this employee works 37.5, 44, 50, and 48 hours, the regular rate of pay in each of these weeks is \$16, \$13.64, \$12, and \$12.50, respectively. Since the employee has already received straight time compensation for all hours worked in these examples, only additional half-time pay is due. For the first week the employee is owed \$600 (fixed salary of \$600, with no overtime hours); for the second week \$627.28 (fixed salary of \$600, and 4 hours of overtime pay at half times the regular rate of \$13.64 for a total overtime payment of \$27.28); for the third week \$660 (salary compensation of \$600, and 10 hours of overtime pay at half times the regular rate of \$12 for a total overtime payment of \$60); for the fourth week \$650 (fixed salary of \$600, and 8 overtime hours at half times the regular rate of \$12.50 for a total overtime payment of \$50).

(2) *Example.* If during the course of 4 weeks this employee works 37.5, 44, 50, and 48 hours and 4 of the hours the employee worked each week were nightshift hours compensated at a premium rate of an extra \$5 per hour, the employee's total straight time earnings would be \$620 (fixed salary of \$600 plus \$20 of non-overtime premium pay for the 4 nightshift hours). In this case, the regular rates of pay in each of these weeks is \$16.53, \$14.09, \$12.40, and \$12.92, respectively, and the employee's total compensation would be calculated as follows: For the first week the employee is owed \$620 (fixed salary of \$600 plus \$20 of non-overtime premium pay, with no overtime hours); for the second week \$648.20 (fixed salary of \$600 plus \$20 of non-overtime premium pay, and 4 hours of overtime at half times the regular rate of \$14.09 for a total overtime payment of \$28.20); for the third week \$682 (fixed salary of \$600 plus \$20 of non-overtime premium pay, and 10 hours of overtime at half times the regular rate of \$12.40 for a total overtime payment of \$62); for the fourth week \$671.68 (fixed salary of \$600 plus \$20 of non-overtime premium pay, and 8 hours of overtime at half times the regular rate of \$12.92 for a total overtime payment of \$51.68).

(3) *Example.* If during the course of 4 weeks this employee works 37.5, 44, 50, and 48 hours and the employee received a \$100 productivity bonus each week, the employee's total straight time earnings would be \$700 (fixed salary of \$600 plus \$100 productivity bonus). In this case, the regular rate of pay in each

of these weeks is \$18.67, \$15.91, \$14, and \$14.58, respectively, and the employee's total compensation would be calculated as follows: For the first week the employee is owed \$700 (fixed salary of \$600 plus \$100 productivity bonus, with no overtime hours); for the second week \$731.84 (fixed salary of \$600 plus \$100 productivity bonus, and 4 hours of overtime at half time the regular rate of \$15.91 for a total overtime payment of \$31.84); for the third week \$770 (fixed salary of \$600 plus \$100 productivity bonus, and 10 hours of overtime at half times the regular rate of \$14, for a total overtime payment of \$70); for the fourth week \$758.32 (fixed salary of \$600 plus \$100 productivity bonus, and 8 hours of overtime at half times the regular rate of \$14.58 for a total overtime payment of \$58.32).

(c) Typically, the salaries described in paragraph (a) of this section are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where the conditions for the use of the fluctuating workweek method of overtime payment are present, the Act, in requiring that "not less than" the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for overtime hours at a rate no greater than that which the employee receives for nonovertime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime formula.

[FR Doc. 2019-23860 Filed 11-4-19; 8:45 am]

BILLING CODE 4510-27-P

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2019-0830]

RIN 1625-AA87

#### Security Zone; Super Bowl 2020, Bayfront Park, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary security zone over certain navigable waters of Biscayne Bay in connection with Super

Bowl 2020 events in Miami, Florida. The temporary security zone is necessary to protect official party, executives, public, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. Anchoring, or remaining within the security zone would be prohibited unless authorized by the Captain of the Port Miami (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 5, 2019.

**ADDRESSES:** You may submit comments identified by docket number USCG–2019–0830 using the Federal eRulemaking Portal at <https://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, call Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard at 305–535–4317 or by email: [Omar.Beceiro@uscg.mil](mailto: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**

The City of Miami will be hosting Super Bowl LIV (54) in February 2020. Additionally, several venues and hotels in the City of Miami downtown area will host Super Bowl-related events during the week preceding the Super Bowl, which is scheduled for February 2, 2020. Venues include Bayfront Park, Adrienne Arsht Center for the Performing Arts, and JW Marriott Marquis Hotel. The Coast Guard anticipates these various events will draw large crowds of people, executives, official party, etc. and present a security concern since the venues may be accessed from or are in close proximity to the waterfront, Biscayne Bay. The COTP has determined the ease of waterfront access to the various venues hosting Super Bowl events present a security concern for attendees.

The purpose of this rulemaking is to ensure the security of the public,

executives, official party and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

##### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a temporary security zone to be enforced 24 hours a day beginning at 8:00 a.m. on January 26, 2020 until 8:00 a.m. on February 3, 2020. The temporary security zone would cover all navigable waters of Biscayne Bay from approximately Venetian Causeway south to and including a portion of the Miami River. The duration of the temporary security zone is intended to ensure the security of the public, executives, official party and surrounding waterway before, during, and after the various Super Bowl-related events in the Downtown area of Miami, Florida.

All persons and vessels are required to transit the security zone at a steady speed and may not slow down, stop, or anchor except in the case of unforeseen mechanical failure or other emergency. Any persons or vessels forced to slow or stop in the zone shall immediately notify the COTP Miami via VHF channel 16.

The 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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-year of the security zone. The security zone will only affect a

small area of Biscayne Bay near Bayfront Park in the Port of Miami for approximately eight days. Vessel traffic; however, will not be impeded by the temporary security zone. Vessels will be able to transit the security zone along the Intracoastal Waterway with the only restriction being the inability to stop or anchor within the zone. Moreover, upon activating the security zone, the Coast Guard will notify the local maritime community through various means including, Local Notice Mariners and Broadcast Notice to Mariners issued on VHF–FM marine radio channel 16.

###### *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 security 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 (Pub. L. 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 call or email 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 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 temporary security zone lasting approximately eight days that would prohibit vessels from stopping or

anchoring within the zone. 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. A draft Record of Environmental Consideration supporting this determination 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 call or email 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 and material 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 <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email 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 <https://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 NPRM 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. Add § 165.T07–0830 to read as follows:

#### **§ 165.T07–0830 Security Zone; Super Bowl 2020, Bayfront Park, Miami, FL**

(a) Regulated Areas: The following is a temporary security zone:

(1) All waters of Biscayne Bay within the following points: Beginning at Point 1 in position 25°47'13" N, 80°11'6" W; thence east to Point 2 in position 25°47'13" N, 80°10'48" W; thence south to Point 3 in position 25°46'11" N, 80°10'48" W; thence west to Point 4 in position 25°46'11" N, 80°11'27" W; thence north to Point 5 in position 25°46'15" N, 80°11'27" W; thence east to Point 6 in position 25°46'15" N, 80°11'6" W; thence back to origin at Point 1.

(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 security zone.

(c) Regulations:

(1) All persons and vessels are required to transit the security zone at a steady speed and may not slow down, stop, or anchor except in the case of unforeseen mechanical failure or other emergency. Any persons or vessels forced to slow or stop in the zone shall immediately notify the Captain of the Port Miami via VHF channel 16.

(2) Persons who must notify or request authorization from the Captain of the Port Miami may do so by telephone at (305) 535–4472, or may contact a designated representative via VHF radio on channel 16.

If authorization to anchor, or remain within the security zone 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 the designated representative.

(d) Enforcement Period: This rule will be enforced from 8:00 a.m. on January 26, 2020 through 8:00 a.m. on February 3, 2020.

Dated: October 31, 2019.

**J.F. Burdian,**

*Captain, U.S. Coast Guard, Captain of the Port Miami.*

[FR Doc. 2019-24133 Filed 11-4-19; 8:45 am]

BILLING CODE 9110-04-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 73

[AU Docket No. 19-290; DA 19-1027]

#### Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Comment Sought on Competitive Bidding Procedures for Auction 106

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; proposed auction procedures.

**SUMMARY:** The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), announce an auction of certain FM broadcast construction permits. This public notice also seeks comment on competitive bidding procedures and proposed minimum opening bid amounts for Auction 106.

**DATES:** Comments are due on or before November 6, 2019, and reply comments are due on or before November 20, 2019. Bidding in Auction 106 is scheduled to begin on April 28, 2020.

**ADDRESSES:** Interested parties may submit comments in response to the *Auction 106 Comment Public Notice*, identified by AU Docket No. 19-290, by any of the following methods:

- *FCC's Website:* Federal Communications Commission's Electronic Comment Filing System (ECFS): <http://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* FCC Headquarters, 445 12th Street SW, Room TW-A325, Washington, DC 20554.

- *People With Disabilities:* Contact the Consumer & Governmental Affairs Bureau to request reasonable accommodations (accessible format documents (braille, large print, electronic files, audio format), sign language interpreters, CART, etc.) by email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call 202-418-0530 (voice), 202-418-0432 (TTY).

For detailed instructions for submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Lynne Milne in the OEA Auctions Division at (202) 418-0660. For general auction questions, the Auctions Hotline at (717) 338-2868. For FM service questions, Lisa Scanlan, Tom Nessinger or James Bradshaw in the MB Audio Division at (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 106 Comment Public Notice*, released October 10, 2019. The complete text of this document, including attachment, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The *Auction 106 Comment Public Notice* and related documents also are available on the internet at the Commission's website: [www.fcc.gov/auction/106](http://www.fcc.gov/auction/106), or by using the search function for AU Docket No. 19-290 on the Commission's ECFS web page at [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs).

All filings in response to the *Auction 106 Comment Public Notice* must refer to AU Docket No. 19-290. Interested parties are strongly encouraged to file comments electronically, and to submit electronically an additional copy of all comments and reply comments to the following address: [auction106@fcc.gov](mailto:auction106@fcc.gov).

*Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs). Follow the instructions for submitting comments.

*Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW, Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. ET. All hand deliveries must be held together with rubber bands or fasteners. Any envelope or box must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail)

must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

#### I. Construction Permits in Auction 106

1. Auction 106 will offer 130 construction permits in the FM broadcast service for 130 FM allotments, including 34 construction permits that were offered but not sold or were defaulted upon in prior auctions. Attachment A of the *Auction 106 Comment Public Notice* lists these specific vacant FM allotments added to the Table of FM Allotments, 47 CFR 73.202(b), and assigned at the indicated communities. Attachment A also lists the reference coordinates for each vacant FM allotment. Each Auction 106 applicant may submit in its short-form application (FCC Form 175) a set of preferred site coordinates for any of its selected construction permits as an alternative to the reference coordinates for that vacant FM allotment.

2. Under established Commission policies, an applicant may apply for any vacant FM allotment listed in Attachment A. If two or more FCC Forms 175 specify the same FM allotment, they will be considered mutually exclusive, and the construction permit for that FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit in Auction 106, that applicant is required to submit a bid in order to obtain the construction permit.

#### II. Proposed Bidding Procedures

3. *Simultaneous Multiple Round Auction Design.* This public notice proposes to auction all construction permits included in Auction 106 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. OEA and MB seek comment on this proposal.

4. *Bidding Rounds.* The Commission will conduct Auction 106 over the internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a dedicated auction bidder line.

5. Auction 106 will consist of sequential bidding rounds, each