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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-4

CGD01-04-044

RIN 1625-AA00

Safety Zone: Beverly Homecoming Fireworks - Beverly, Massachusetts.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Beverly Homecoming Fireworks on August 8, 2004 in Beverly, Massachusetts, temporarily closing all waters of Beverly Harbor in a 400 yard radius of the fireworks barge located at approximate position 42° 32' 34" N, 070° 51' 54" W. The safety zone will prohibit entry into or movement within this portion of Beverly Harbor during the closure period.

DATES: This rule is effective from 9:00 P.M. EDT on August 8, 2004 to 10:00 P.M. EDT on August 8, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01-04-044 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA, between 8 A.M. and 3 P.M., Monday through Friday, except Federal holidays.

AUG 5 2004 #3053 KK.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223-3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A notice of proposed rulemaking (NPRM) was not published for this regulation because the logistics with respect to the fireworks presentation were not determined with sufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from transiting a portion of Beverly Harbor during the fireworks event and to provide for the safety of life on navigable waters. Additionally, the zone should have a negligible impact on vessel transits due to the fact that vessels will only be limited from the area for 1 hour, and vessels can still transit in other areas in the majority of Beverly Harbor during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Any delay encountered in this regulation's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from

transiting a portion of Beverly Harbor during the fireworks event and to provide for the safety of life on navigable waters. Additionally, the zone should have a negligible impact on vessel transits due to the fact that vessels will only be limited from the area for 1 hour, and vessels can still transit in other areas in the majority of Beverly Harbor during the event.

Background and Purpose

This regulation is establishing a safety zone in Beverly Harbor within a 400-yard radius of the fireworks barge located at approximate position 42° 32' 34" N, 070° 51' 54" W. The safety zone will in effect from 9:00 P.M. EDT until 10:00 P.M. EDT on August 8, 2004.

The zone will restrict movement within this portion of Beverly Harbor and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Discussion of Rule

The safety zone is in effect from 9:00 P.M. EDT until 10:00 P.M. EDT August 8, 2004. Marine traffic may transit safely outside of the safety zone in the majority of Beverly Harbor

during the event. Because of the limited time and because the zone leaves the majority of Beverly Harbor open for navigation, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. Although this rule will prevent traffic from transiting a portion of Beverly Harbor during the effective periods, the effects of this rule will not be significant for several reasons: vessels will only be excluded from the area of the safety zone for 1 hour, vessels will be able to operate in the majority of Beverly Harbor during this time, and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Beverly Harbor from 9:00 P.M. EDT to 10:00 P.M. EDT on August 8, 2004.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only 1 hour, vessel traffic can safely pass around the safety zone, and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 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.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34) (g) of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the

docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary section 165.T04-044 to read as follows:

§165.T04-044 Safety Zone: Beverly Homecoming Fireworks - Beverly, Massachusetts.

(a) Location. The following area is a safety zone:

All waters of Beverly Harbor in a 400- yard radius of the fireworks barge located at approximate position 42° 32' 34" N, 070° 51' 54" W.

(b) Effective Date. This section is effective from 9:00 P.M. EDT until 10:00 P.M. EDT on August 8, 2004.

(c) Regulations.

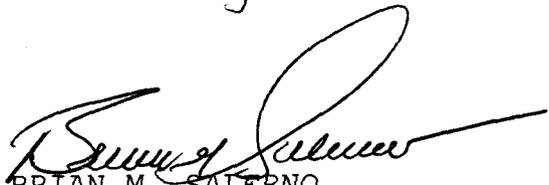
(1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol

personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

*MS
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DATED: *08 Aug 04*



BRIAN M. SALERNO
Captain, U. S. Coast Guard
Captain of the Port
Boston, Massachusetts