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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

USCG-2004-19416-12

33 CFR Part 165

CGD01-04-097

RIN 1625-AA00

Safety and Security Zones: Boston Pops Concert and Fireworks - Boston, Massachusetts.

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety and security zone for the Boston Pops Concert and Fireworks display on July 29, 2004 in Dorchester Bay in Boston, MA. This safety and security zone will temporarily close all waters of Dorchester Bay around the JFK Library on Columbia Point along the shoreline from a point at 42° 19' 21"N, 071° 02' 37"W to 42° 18' 35"N, 071° 02' 33"W and extending approximately 200 yards seaward from the shoreline, up to and including a 400 yard perimeter around the fireworks barge at approximate position 42° 18' 25"N, 071° 02' 09"W. These zones are needed to protect the general public, former presidents and their spouses, the Democratic nominee for president and vice president, their spouses, and particular U.S. Congressmen from potential acts of terrorism, and from potential

hazards posed by a fireworks display. These zones will prohibit entry into or movement within this portion of Dorchester Bay during the closure period.

DATES: The rule is effective from 7:00 p.m. EDT on July 29, 2004 to 1:00 a.m. EDT on July 30, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01-04-097 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between 9:00 a.m. and 3:00 p.m. Monday through Friday, except Federal holidays.

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 final location with respect to the fireworks presentation was 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 these zones are needed to prevent traffic from transiting a portion of Dorchester Bay during the fireworks event, to provide

for the safety of life on navigable waters, and to protect former presidents and their spouses, the Democratic nominee for president and vice president, their spouses, and particular U.S. Congressmen from potential acts of terrorism.

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 and security zones are needed to prevent traffic from transiting a portion of Dorchester Bay during the fireworks event and to provide for the safety and security of the public. Additionally, the zones should have negligible impact on vessel transits due to the fact that vessels will only be limited from the area for only 6 hours.

Background and Purpose

This regulation will establish safety and security zones on all waters of Dorchester Bay around Columbia Point along the shoreline from a point at 42° 19' 21"N, 071° 02' 37"W to 42° 18' 35"N, 071° 02' 33"W and extending approximately 200 yards seaward from the shoreline, up to and including a 400 yard perimeter around the fireworks barge at approximate position 42° 18' 25"N by 071° 02' 09"W. This zone will be in effect from 7:00 p.m. EDT on July 29 until 1:00 a.m. EDT on July 30, 2004.

The zone will restrict movement within this portion of

Dorchester Bay and is needed to protect the maritime public from the potential dangers posed by a fireworks display. It is also needed to protect United States Secret Service (USSS) protectees and other important government officials from potential acts of terrorism during the Boston Pops Concert and Fireworks event. The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Vessels most likely to be affected are recreational craft or small passenger vessels wishing to view the fireworks display and/or Boston Pops concert from the water. These vessels will be able to transit areas around the zones for these purposes. Public notifications will be made prior to the effective period via safety marine information broadcasts.

Discussion of Rule

This rule establishes safety and security zones for the Boston Pops Concert and Fireworks on July 29, 2004 in Dorchester Bay, MA, temporarily closing all waters of Dorchester Bay around Columbia Point, extending approximately 200 yards seaward from the shoreline, up to and including the 400 yard perimeter around the fireworks barge in Dorchester Bay.

This rule is needed to protect the general public, USSS protectees (former presidents and their spouses, the Democratic nominee for president and vice president and their spouses) and particular U.S. Congressmen from potential acts of terrorism or subversive acts during the concert and from the potential hazards

posed by a fireworks display. These safety and security zones will prohibit entry into or movement within this portion of Dorchester Bay around Columbia Point during the closure period.

Regulatory Evaluation

This proposed 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. 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).

We expect the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Dorchester Bay during the effective period, the affects of this regulation will not be significant for several reasons: vessels will be restricted from the area for a minimal time period; vessels may safely transit outside of the zones; and advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard 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 Dorchester Bay on July 29, 2004. The safety and security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the period is limited in duration; there is limited vessel traffic at this time of day; and advance notifications will be made to the local maritime community by safety marine information broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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.

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

Taking of Private Property

This proposed rule would not affect 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 proposed 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

The Coast Guard analyzed this proposed 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 pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this proposed 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 draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket

where indicated under ADDRESSES. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

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.T04-097 to read as follows:

§165.T04-097 Safety and Security Zones: Boston Pops Concert and Fireworks-Boston, Massachusetts.

(a) Location. All waters of Dorchester Bay around Columbia Point, extending along the shoreline from a point at 42° 19' 21"N, 071° 02' 37"W to 42° 18' 35"N, 071° 02' 33"W and extending approximately 200 yards seaward from the shoreline, up to and including a 400 yard perimeter around the fireworks barge at approximate position 42° 18' 25"N by 071° 02' 09"W.

(b) Effective Date. This section is effective from 7:00 p.m. EDT on July 29, 2004 until 1:00 a.m. EDT on July 30, 2004.

(c) Regulations.

(1) In accordance with the general regulations in section 165.23 and 165.33 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.

DATED: JUL 28 2004



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