

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Temporarily add § 165.T01–081 to read as follows:

§ 165.T01–081 Safety Zone: Time Warner Cable Fireworks—Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of Boston Inner Harbor within a 400-yard radius of the fireworks barge located at position 42°21.616 N, 071°02.717 W.

(b) *Effective date.* This section is effective from 10:30 p.m. on July 25, 2004, until 12 a.m. on July 26, 2004.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) 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: July 15, 2004.

Brian M. Salerno,

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

[FR Doc. 04–16830 Filed 7–20–04; 2:56 pm]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–002]

RIN 1625–AA87 (Formerly RIN 1625–AA00)

Security Zones; Democratic National Convention, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a series of temporary security zones on the Charles River in the vicinity of the FleetCenter/North Station, throughout a portion of Boston Inner Harbor in the vicinity of Logan International Airport and surrounding

Very Important Person (VIP) vessels designated by the Captain of the Port (COTP) Boston, Massachusetts, to be in need of Coast Guard escort for security reasons while they are transiting the COTP Boston, Massachusetts zone.

These temporary zones are needed to safeguard protectees, the public, designated VIP vessels and crews, other vessels and crews, and the infrastructure within the COTP Boston, Massachusetts zone from terrorist or subversive acts during the Democratic National Convention (DNC): a National Special Security Event (NSSE), being held from July 26, 2004, to July 29, 2004, at the Fleet Center/North Station Facilities, in Boston, Massachusetts. These security zones will prohibit entry into or movement within certain portions of the Charles River in the vicinity of the FleetCenter/North Station, Boston Inner Harbor in the vicinity of Logan International Airport, and 50 yards surrounding designated VIP vessels in the COTP Boston, Massachusetts zone, during the specified closure periods within the July 24, 2004, to July 31, 2004, timeframe.

DATES: This rule is effective from 8 a.m. e.d.t. on July 24, 2004, through 10 p.m. e.d.t. on July 31, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–002) 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.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 21, 2004, we published a notice of proposed rulemaking (NPRM) entitled “Security Zones; Democratic National Convention, Boston, MA” in the **Federal Register** (69 FR 29246). We received one electronically submitted comment regarding the proposed rule. No public meeting was requested, and none was held.

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**. This rule is needed 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 or subversive acts during the Democratic National Convention (DNC). Any delay encountered in this rule’s effective date would be contrary to public interest and public safety.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC on September 11, 2001, and the continuing concern for future terrorist and or subversive acts against the United States, especially at events where a large number of persons are likely to congregate, the Coast Guard is establishing temporary security zones in certain waters of the Charles River in the vicinity of the FleetCenter/North Station, certain waters of Boston Inner Harbor in the vicinity of Logan International Airport, and surrounding VIP designated vessels identified by the COTP Boston, Massachusetts during the DNC. The DNC has been designated a National Special Security Event (NSSE) and will occur between July 26, 2004, and July 29, 2004, at the FleetCenter/North Station facilities, in Boston, Massachusetts. Security measures for this event, including security zones proposed herein, are necessary from July 24, 2004 to July 31, 2004, and are needed to safeguard maritime transportation infrastructure, the public, and designated protectees, and to safeguard designated VIP vessels carrying protectees, from potential acts of violence or terrorism during DNC activities. The planning for these security zones has been conducted in conjunction with, and as a result of requests from, the United States Secret Service (USSS), the lead federal agency for the DNC, and the Capitol Police. This rule will temporarily close sections of the Charles River in the vicinity of the FleetCenter/North Station, certain Boston Inner Harbor water areas along the perimeter of Logan International Airport, and surrounding designated VIP vessels identified by the COTP Boston, Massachusetts, to be in need of Coast Guard escort for security reasons while they are transiting the COTP Boston, Massachusetts zone, at specified times from July 24, 2004, to July 31, 2004.

For purposes of this rulemaking, designated VIP vessels include any vessels designated by the Coast Guard COTP Boston, Massachusetts to be in need of Coast Guard escort in the COTP Boston, Massachusetts zone, based on a request from the USSS or the Capitol Police. Any VIP designated vessel may contain protectees. “Protectees” for the purposes of the USSS include the President of the United States and

former presidents and their spouses, the Democratic nominee for president, and the Democratic nominee for vice president and their spouses.

“Protectees” for the purposes of the Capitol Police include particular U.S. Congressmen. One or more Coast Guard Cutters or small boats will escort designated VIP vessels deemed in need of escort protection.

The Captain of the Port Boston, Massachusetts will notify the maritime community of the periods during which the security zones will be enforced. Broadcast notifications will be made to the maritime community advising them of the boundaries of the zones.

No person or vessel may enter or remain in the prescribed security zones at any time without permission of the Captain of the Port. Each person or vessel in a security zone must obey any direction or order of the COTP, or the designated Coast Guard on-scene representative. The COTP may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the COTP. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine for not more than \$250,000 for an individual and \$500,000 for an organization), *in rem* liability against the offending vessel and license sanctions. This rule is established under the authority contained in 50 U.S.C. 191, and 33 U.S.C. 1226 and 1231.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the “Magnuson Act”) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

Discussion of Comments and Changes

One electronically filed comment was received regarding the proposed

regulation. The content of the comment was three-fold. It recognized the need to establish restrictions during the DNC period based on the significance of the event and the current threat environment, and commended the proposed rule for appropriately balancing security needs with waterway use. It recommended further outreach efforts, and lastly suggested the rule could be improved by providing additional clarification to waterway users regarding application of the restrictions. The specific questions posed and responses follow:

To address outreach, both the Coast Guard and the USSS have undergone extensive outreach efforts to ensure affected waterway users would be informed of DNC related waterway restrictions. Information on proposed restrictions was provided at Boston Port Operators Group meetings on February 18, March 17, and April 21, at two specific industry stakeholder meetings on March 30 and 31, and at a harbor masters and salvors meeting on May 27, 2004.

Meetings were also held at the Watertown Yacht Club and the Jubilee Yacht Club, which included representatives from numerous clubs in the Boston and surrounding areas. Further, an informational brochure outlining the proposed security zones was distributed at these meetings, to other local boating and yacht clubs, to the Massachusetts Bay Yacht Association, and at local boat shows by the Coast Guard Auxiliary. The informational brochure is also posted on the Marine Safety Office Boston internet Web site found at <http://uscg.mil/d1/units/msobos/>.

The Coast Guard and the USSS will continue notifications by distribution of the final rule (once published) to maritime stakeholders and by marine information broadcasts. Below are the seven specific questions posed in the comment:

(1) How far in advance of transit during the week of the Convention must commercial, regular users of the security zone seek pre-approval of such transit?

Pre-approval is defined as permission given prior to the start of DNC security operations by the Captain of the Port Boston to transit through a security zone. The process by which commercial entities could gain pre-approval to transit DNC security zones began in September of 2003 when the USSS identified affected commercial operators and began negotiations regarding potential waterway restrictions. Shortly thereafter the Coast Guard Captain of the Port Boston joined in the outreach effort and assisted the USSS in further

identification of affected commercial operators as the actual parameters of the proposed security zones took shape. Information on proposed restrictions and requests for affected commercial entities were provided at Boston Port Operators Group meetings on February 18, March 17, and April 21, at two specific industry stakeholder meetings on March 30 and 31, and a harbor masters and salvors meeting on May 27, 2004. At this point, the Coast Guard expects that any pre-approval requests should have already been submitted to the USSS or the Coast Guard. Once the security zones go into effect, only pre-approved transits and those requested due to emergency situations will be allowed. We have revised the text of paragraph (b)(2) or the regulation to clarify this point.

(2) How extensive will the pre-transit sweep by law enforcement be?

The pre-transit sweep will be as extensive as deemed necessary by law enforcement presence for the safety and security of the port during the Democratic National Convention.

(3) What is a “commercial vessel” for purposes of the regulation?

A commercial vessel is considered any vessel engaged in “commercial service”. Commercial service includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel as stated in 46 U.S.C. 2101(5).

(4) What pattern of use constitutes a “regular route” for purposes of the regulation?

A “regular route” for the purposes of this regulation means transits that are based on a pre-set schedule which has been established ahead of time, and where such transits have been occurring in the specified areas as part of an ongoing business over the past several months or years.

(5) What are the purposes of the pre-transit sweep?

The purpose of the pre-transit sweep is to ensure the safety and security of the persons on board the vessel, law enforcement personnel, and for the safety and security of the port.

(6) Upon what grounds, if any, could on-scene Coast Guard personnel refuse passage rights to commercial users whose route was pre-approved by the COTP?

Any act, behavior, or situation deemed unsafe or a threat to security by on-scene law enforcement personnel who are authorized by the COTP to enforce the safety and security zones could result in refusal of passage.

(7) Is there any appeal procedure for those who appeal in advance to the

COTP for permission to pass through a security zone, but are denied clearance?

Comments or correspondence may be directed to the office listed under **ADDRESSES** and will be reviewed.

However, the COTP has final authority and the right to deny permission or revoke prior permission when deemed necessary for the safety and security of the public or the Boston COTP zone.

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 the DHS is unnecessary.

Although this proposed regulation will temporarily prevent traffic from transiting a portion of the Charles River, Boston Inner Harbor and surrounding certain VIP designated vessels during the specified effective periods, the effects of this regulation will be minimized based on several factors. Vessels that historically have conducted daily business in the area of the Charles River security zone will be allowed to transit, as long as transits have been prearranged as discussed, thereby preventing disruption to their normal business. The potential delays associated with vessels being swept and escorted through the zone will be minimal. The Logan Airport DNC security zone mirrors an existing state security zone, and therefore users of these waters will not encounter restrictions significantly different from those already in existence. The temporary security zones surrounding VIP designated vessels are included in this rule as a precautionary measure should they become necessary. At this time, no VIP designated vessel security zones are scheduled. If they are deemed necessary during the event and are subsequently enacted, these zones are limited in scope, enough so that vessels may transit safely outside of the zones and still make use of the waterway. Additionally, VIP designated vessels will be advised to operate in such a manner as to avoid restricting the main shipping channels from use by large commercial vessels that require the depth of water to operate safely. Lastly,

advance notice to waterways users has been, and will continue to be, made via outreach meetings, informational brochures, safety 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in these security zones during this event. However, this proposed rule will not have a significant economic impact on a substantial number of small entities due to: transit accommodations that are being made for regular commercial operators within the Charles River and Logan Airport DNC zones; the minimal time that vessels will be restricted from the area of the zones; vessels being able to pass safely around the zones; vessels having to wait only a short time for the VIP designated vessels to pass if they cannot safely pass outside the zones; and the advance notifications which will be made to the local maritime community by marine information broadcasts.

Assistance for Small Entities

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 the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 Chief Petty Officer Daniel Dugery Waterways Safety and Response, Marine Safety Office Boston, (617) 223–3000.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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 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 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.ID, 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" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Safety measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 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 § 165.T01-002 to read as follows:

§ 165.T01-002 Security Zones; Democratic National Convention, Boston, MA.

(a) *Location.* The following areas are security zones:

(1) All navigable waters of the Charles River from the westernmost portion of the Monsignor O'Brien Highway Bridge/Museum of Science structure as the western boundary, to a line drawn across the Charles River, 50 yards east and parallel to, the Charlestown Bridge, as the eastern boundary.

(2) All waters between the mean high water line around the perimeter of Logan International Airport and a line measured 250 feet seaward of and parallel to the mean high water line.

(3) All navigable waters 50 yards around any designated Very Important Person vessel carrying specified protectees during Democratic National Convention activities, in the Captain of the Port Boston, Massachusetts zone.

(b) *Regulations.* (1) Entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Boston.

(2) Persons desiring to transit the area of the security zones may, prior to the event, contact the Captain of the Port at telephone number 617-223-3000/5750 to request pre-approval. Persons with pre-approval from the Captain of the Port should communicate with and verify on-scene approval from the authorized on-scene patrol representative on VHF channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) All persons and vessels must comply with the instructions of the

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

(4) The Captain of the Port or his or her designated representative will notify the maritime community of periods during which these zones will be enforced. The Captain of the Port or his or her designated representative will identify designated Very Important Person vessel transits by way of marine information broadcast. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement period.* This section will be enforced from:

(1) 12:01 a.m. e.d.t., on July 26, 2004, until 2 a.m. e.d.t., on July 30, 2004, with respect to the Charles River Zone described in paragraph (a)(1).

(2) 8 a.m. e.d.t., on July 24, 2004, until 10 p.m. e.d.t., on July 31, 2004, with respect to the Logan Airport Democratic National Convention Zone described in paragraph (a)(2).

(3) 8 a.m. e.d.t., on July 24, 2004, until 10 p.m. e.d.t., on July 31, 2004, with respect to the moving security zones described in paragraph (a)(3) around designated Very Important Person vessels carrying specified protectees, as deemed necessary by the United States Secret Service or U.S. Capitol Police, 15 minutes prior to and while they are onboard the vessel.

Dated: July 15, 2004.

Brian M. Salerno,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01-04-087]

RIN 1625-AA00

Safety Zone; Bridge Demolition, Raritan River, Perth Amboy, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.