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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG-2012-0100]

RIN 1625-AA00; 1625-AA08

Special Local Regulation and Security Zone: War of 1812

Bicentennial Commemoration, Port of Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation and temporary security zones during and after the War of 1812 Bicentennial Commemoration events in the Port of Boston, Massachusetts, to be held between June 28, 2012 and July 6, 2012. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event.

DATES: This rule is effective and will be enforced from 9:00 a.m. on June 29, 2012 to 6:00 p.m. on July 6, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0100. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" Box and click "SEARCH." Click on Open Docket Folder on the line associated with the rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

On April 3, 2012, we published a notice of proposed rulemaking (NPRM) entitled: Special Local Regulation and

Security Zone: War of 1812 Bicentennial Commemoration, Port of Boston, Massachusetts; in the Federal Register (77 FR 19963). Two comments were received in the proposed rule's docket:

- One comment was accidentally misfiled from an unrelated FAA regulation and did not pertain to our proposed rulemaking. It has since been removed from the docket for this rule by the Docket Management System.
- One comment asked simply "Will there be any provisions for Press Boats for the event? If so how should the vessel be flagged or identified as such?" The Coast Guard recommends that a boat with members of the media onboard, display something with the word "MEDIA" that is visible to other vessels.

No public meeting was requested of the Coast Guard, and none was held.

The event sponsor hosted a planning and coordination meeting that was open to the public on October 12, 2011 and held an Initial Planning Conference on February 14-15, 2012 and a mid-term planning conference on May 8, 2012 in Boston, MA. Recommendations to employ a similar pattern to that which was used during the Sail Boston 2009 events were

received during this meeting; such recommendations are incorporated into this document.

Additionally, informal discussions were held with port stakeholders in December 2011, January, March, April, and May 2012 during the Boston's Port Operators Group monthly Meetings, and comments recommending the use of traffic patterns the way they were used during Sail Boston 2009 have been addressed.

On January 26, 2012 the Coast Guard briefed federal, state, and local government agencies to update them on Coast Guard planning for the War of 1812 Bicentennial Commemoration Events. This meeting was also attended by several local business leaders. Nothing discussed at this meeting impacted the drafting of this proposed regulation.

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 in the effective date of this rule could jeopardize the safety of life on navigable waters and protection of U.S. and Foreign military vessels, U.S. and foreign government sailing vessels, private vessels, spectators, and the Port of Boston during these events.

B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C.

1226, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define special local regulations and security zones.

The purpose of this rule is to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected in the Port of Boston during the War of 1812 Bicentennial Commemoration events.

C. Discussion of Comments, Changes and the Final Rule

The United States Navy is planning a series of events nationwide to celebrate the commemoration of the War of 1812. The Port of Boston events will occur between June 28 and July 6, 2012. The events will consist of a gathering of U.S and foreign military vessels, U.S. and foreign government sailing vessels mooring in various berths throughout the Port of Boston.

The War of 1812 Bicentennial Commemoration events are expected to conform to the following outline of events:

1. June 28-29 - Multiple U.S. and foreign military vessels arrive;
2. June 30: Arrival of the U.S. and foreign

- government sailing vessels;
3. June 28 through July 06: Security Zones in effect;
 4. June 30 through July 06: Public tours of U.S and Foreign military vessels and U.S and foreign government sailing vessels;
 5. June 29 through July 06: Vessel movement control measures in effect;
 6. July 4: USS CONSTITUTION and USCGC EAGLE Parade;
 7. July 4: USN Blue Angles aerial demonstration.

On July 4, starting at 11:00 a.m. there will be salute to the USS CONSTITUTION and USCGC EAGLE as they sail from Constitution Pier, outbound Boston Main Channel to Castle Island and return. This will be followed by an air demonstration by the Navy's Blue Angels above Boston Inner Harbor at approximately 12:15 p.m.

Special Local Regulations

In the year 2009, a similar event, Sail Boston 2009, drew several hundred thousand spectators by both land as well as water to Boston Harbor.

Recognizing the significant draw this event may have on recreational boating traffic, the Coast Guard's is establishing a special local regulation that would create

vessel movement control measures in Boston Harbor through a Regulated Area, which will be in effect during the War of 1812 Bicentennial Commemoration events.

This regulated area is needed for vessel movement control measures and to facilitate law enforcement vessel access to support facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with dense vessel traffic.

The Regulated Area establishes a counter-clockwise traffic pattern around Boston Inner Harbor to ensure spectator vessels are following an organized route, facilitating the smooth flow of boating traffic, thereby minimizing disruption on the waterway. A Coast Guard Patrol Commander (PATCOM) will be designated and on scene controlling the flow of traffic through the Regulated Area.

The waterway between the World Trade Center Pier and the Fish Pier, as well as the waterway within the Reserved Channel do not constitute large areas for unhindered navigation. Due to the navigation restrictions in these waterways, when vessels over 125 feet enter the area, on-scene patrol personnel will halt the flow of vessel traffic and allow no other vessel in the channel until the vessel greater than 125 feet is clear of the narrow channel.

Due to concerns of tenants at the World Trade Center, Fish Piers and the Black Falcon Terminal, waterside viewing hours for vessels berthed at these facilities will be limited to times specified in the regulatory text, outside of which only vessels which are tenants within the channels of the World Trade Center, Fish Pier and Reserved Channel will be authorized access within those areas.

A comment was received on the proposed ruling requesting to know what provisions will be made to identify press boats. To help identify a press boat, The Coast Guard recommends that a boat with members of the media onboard, display something with the word "MEDIA" that is visible to other vessels.

Security Zones

Additionally, the Coast Guard is establishing 25-yard security zones surrounding participating vessels while moored. The regulations will be in effect in Boston Harbor throughout the effective period. These restrictions are expected to minimize the risks associated with the anticipated large number of recreational vessel traffic within the confines of Boston Inner Harbor operating in conjunction with commercial deep draft vessel traffic that pose a significant threat to the safety of life.

This rule is effective and will be enforced from 9:00 a.m. on June 29, 2012 to 6:00 p.m. on July 06, 2012.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation imposes traffic restrictions in portions of Boston Harbor during the events, the effect of this regulation will not be significant for the following reasons: the regulated area and security zones will only be in place during the week long War of 1812 activities, and Extensive advance notice will be made to mariners via appropriate means, which may include broadcast notice to mariners, local notice to mariners, facsimile,

marine safety information bulletin, local Port Operators Group meetings, the Internet, USCG Sector Boston Homeport webpage, and local newspapers and media. The advance notice will permit mariners to adjust their plans accordingly. Additionally, the regulated area is tailored to impose the least impact on maritime interests without compromising safety.

Similar restrictions were established for Sailing Boston 1992, 2000, and 2009 events. Based upon the Coast Guard's experiences from those previous similar magnitude events, these regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the necessary level of safety.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit, fish, or anchor in portions of Boston Harbor during various times during the effective

period.

The rule would not have a significant economic impact on a substantial number of small entities for the same reasons outlined in the **Executive Order 12866** and **Executive Order 13563** section above.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the 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, above.

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). The Coast Guard will not retaliate against small entities that question or complain

about this rule or any policy or action of the Coast Guard.

4. 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).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 rule under that Order and determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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.

7. 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "Significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have

concluded 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 rule involves temporary security zones and a special local regulation. This regulatory action is categorically excluded from further environmental analysis and review paragraph 34(g) and (h) respectively of figure 2-1 of the Commandant Instruction. An environmental analysis checklist and Categorical Exclusion Determination are 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 rule.

List of Subjects

33 CFR Part 100

Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Waterways.

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 amends 33 CFR Part 100 and 165 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary § 100.35T01-0100 to read as follows:

§ 100.35T01-0100 Special Local Regulation; War of 1812

Bicentennial Commemoration, Port of Boston, Massachusetts.

(a) Location: This special local regulation establishes a regulated area to include all waters west of a line drawn from position 42°20'21"N, 71°00'37"W, the monument at Castle Island, to position 42°20'45"N, 71°00'29"W, the Logan Airport Security Zone Buoy "24" and then position 42°20'48"N, 71°00'27"W, a point of land, including the Reserved Channel to position 42°20'34"N, 71°02'11"W, the Summer Street retractile bridge, the Charles River to position 42°22'07"N, 71°03'40"W, the Gridley Locks at the Charles River Dam, the Mystic River to position 42°23'22"N, 71°04'16"W, the Alford Street Bridge and the Chelsea River to position 42°23'09"N, 71°02'21"W the McArdle Bridge.

(b) Special Local Regulations.

(1) During the effective period, vessel operators transiting through the regulated area shall proceed in a counterclockwise direction at no wake speeds not to exceed five knots, unless otherwise authorized by the Captain of

the Port.

(2) Vessel operators shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) From 9:00 a.m. on June 29, 2012 through 6:00 p.m. on July 6, 2012 vessel control measures will be implemented. The traffic pattern will be in a counterclockwise rotation, such that all vessels shall stay generally as far to the starboard side of the channel as is safe and practicable.

(4) To facilitate commercial ferry traffic with minimal disruption, commercial ferries within the regulated area, moving between stops on their normal routes, will be exempt from the mandatory counterclockwise traffic pattern. This exemption does not give ferries navigational precedence or in any way alter their responsibilities under the Rules of the Road or any other pertinent regulations.

(5) Vessel operators transiting the waterway between the Fish Pier and World Trade Center must enter and keep to the starboard side of the channel, proceeding as directed by on-scene Coast Guard patrol personnel. Vessel traffic

shall move in a counterclockwise direction around a turning point as marked by an appropriate on-scene patrol vessel.

(6) Vessel operators transiting the regulated area must maintain at least twenty five (25) yard safe distance from all official War of 1812 event participants, all U.S. military vessels under 100 feet, and all foreign military vessels, and must make way for all deep draft vessel traffic underway in the regulated area.

(7) When a vessel greater than 125 feet enters the waterway between the World Trade Center and the Fish Pier and inside the Reserved Channel, no other vessel will be allowed to enter until that vessel departs that area unless authorized by the on-scene Patrol Commander.

(8) From 10:00 p.m. through 8:00 a.m. daily, while regulated area is in effect, only vessels which are tenants within the channels of the World Trade Center, Fish Pier and Reserved Channel will be authorized access.

(9) The Captain of the Port (COTP) may control the movement of all vessels operating on the navigable waters of Boston Harbor when the COTP has determined that such orders are justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, and other temporary hazards circumstance.

(c) Effective period. This regulation is effective

from 9:00 a.m. on June 29, 2012 through 6:00 p.m. on July 6, 2012.

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Publ. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

4. Add temporary § 165.T01-0100 to read as follows:

§ 165.T01-0100 Security Zones: War of 1812 Bicentennial Commemoration, Port of Boston, Massachusetts.

(a) Location. The following are security zones: a twenty five (25) yard safety and security zone around all moored official War of 1812 event participants, all moored U.S. military vessels under 100 feet, and all foreign military vessels within the Captain of the Port Zone Boston.

(b) Definitions. For purposes of this section "Designated on-scene representative" is any Coast Guard commissioned, warrant, or petty officer who has been

designated by the Captain of the Port (COTP) Boston to act on the COTP's behalf. The designated on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(c) Effective period. This regulation is effective from 9:00 a.m. on June 28, 2012 until 6:00 p.m. on July 6, 2012.

(d) Regulations.

(1) In accordance with the general regulations in 33 CFR 165.33, subpart D, no person or vessel may enter, transit, anchor or otherwise move within the security zones created by this section unless granted permission to do so by the COTP Boston or the designated on-scene representative.

(2) Vessel operators desiring to enter or operate within the security zone shall contact the COTP or the

designated on-scene representative via VHF channel 16 to obtain permission.

(3) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: June 4, 2012

J. N. Healey
Captain, U.S. Coast Guard
Captain of the Port Boston

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