

Dated: September 24, 2002.

**B.M. Salerno,**

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

[FR Doc. 02-25794 Filed 10-10-02; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-01-227]

RIN 2115-AA97

#### Safety and Security Zones; High Interest Vessels—Boston Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is establishing safety and security zones for vessels determined to be in need of a Coast Guard escort by the Captain of the Port (COTP), Boston. The safety and security zones close all waters of Boston Harbor one thousand (1000) yards ahead and astern and one hundred (100) yards on each side of an escorted vessel (EV) in transit. The zone prohibits entry into or movement within this portion of the COTP Boston zone without COTP authorization. The safety and security zone is needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. The zones will prohibit entry into or movement within this portion of the COTP Boston zone without COTP authorization.

**DATES:** This final rule is effective November 12, 2002.

**ADDRESSES:** Documents as indicated in this preamble are part of docket CGD01-01-227 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On April 29, 2002, we published "Interim rule with request for comments" in the **Federal Register** (67 FR 20909). As of the end of the comment period, June 28, 2002, the Coast Guard has not received additional comments on this rule. No additional

public hearings were requested, and none were held. Public comments received in response to the NPRM, published on January 18, 2002 at 67 FR 2614, were incorporated into the interim final rule. No comments were received on the interim final rule and, therefore, no changes have been made in this final rule.

##### Background and Purpose

The September 11, 2001 terrorist attacks on New York City and Washington, DC inflicted catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are necessary for vessels that may be targets of terrorist acts. This final rule establishes safety and security zones for vessels the Captain of the Port (COTP) Boston determines are in need of a Coast Guard escort.

##### Discussion of Comments and Changes

In the interim rule with requests for comments (67 FR 20909), the Coast Guard incorporated 22 comments from the public regarding this proposal. All comments received were considered in the development of this Final Rule. As of June 28, 2002 no additional changes have been proposed.

##### Regulatory Evaluation

This final 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

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 DOT is unnecessary.

Although this final rule will prevent some traffic from moving within a portion of Boston Harbor during EV transits, the effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area; vessels can pass safely around the zones at most points in the Harbor; vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

##### 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 final rule will not have a significant economic impact on a substantial number of small entities. This final 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 Boston Harbor during EV transits. This final rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zones; vessels can pass safely around the zones at most points in Boston Harbor; vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones; and advance notifications 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), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Daniel Dugery at the address listed under **ADDRESSES**.

##### Collection of Information

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

##### Federalism

The Coast Guard analyzed this final rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

##### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that

require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

#### Taking of Private Property

This rule would 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

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

#### Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2-1, (34)(g), of Commandant Instruction M16475.ID, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is 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, Security measures, Waterways.

Accordingly, the interim rule amending 33 CFR part 165 which was published at 67 FR 20909 on April 29, 2002, is adopted as a final rule with the following change:

#### 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; 49 CFR 1.

2. Revise § 165.114(b) to read as follows:

#### § 165.114 Safety and Security Zones: Escorted Vessels—Boston Harbor, Massachusetts.

\* \* \* \* \*

(b) *Escorted vessel definition.* For the purposes of this section, escorted vessels operating in Boston Harbor include the following: Any vessels deemed to be in need of escort protection by the Captain of the Port, Boston for security reasons.

\* \* \* \* \*

Dated: September 24, 2002.

**B.M. Salerno,**

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[FR Doc. 02-25793 Filed 10-10-02; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

[CGD07-02-117]

**RIN 2115-AE46**

#### Special Local Regulations; Columbus Day Regatta, Biscayne Bay, Miami, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Temporary special local regulations are being established for the Columbus Day Regatta. The event will be held from 9 a.m. to 5 p.m. on October 12 and 13, 2002 in Biscayne Bay, Miami, Florida. These regulations create a regulated area that limits the movement of non-participant vessels and are needed to provide for the safety of life on navigable waters during the event.

**DATES:** This rule is effective from 9 a.m. on October 12, 2002 until 5 p.m. on October 13, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD07-02-117] and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** BMC Victor Sorensen, Coast Guard Group Miami at (305) 535-4317.

#### 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. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public due to the high volume of vessel traffic and risk of collision posed by the approximately 500 participant vessels, the approximately 50 spectator vessels, and the several hundred vessels which congregate annually for Columbus Day in Biscayne Bay.

For the same reasons, 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**.

#### Background and Purpose

Columbus Day Regatta, Inc., is sponsoring a sailboat race with approximately 500 sailboats, ranging in length from 20 to 60 feet participating in the event. The race will take place in Biscayne Bay from Dinner Key to Soldier Key on October 12 and 13, 2002. There will also be approximately 50 spectator craft and several hundred additional vessels in the area for an annual Columbus Day gathering. These regulations are intended to promote safe navigation on the waters of Biscayne Bay by controlling the traffic in the regulated area.