



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2014-0246]

RIN 1625-AA87

Security Zone, John Joseph Moakley United States Courthouse; Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone within Sector Boston's Captain of the Port (COTP) Zone on the waters in the vicinity of John Joseph Moakley United States Courthouse, Boston, MA. This security zone will expedite public notification of high profile court proceedings at the Moakley Courthouse and is necessary to protect people, property, and the Port of Boston from subversive acts.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2014-0246 in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this 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.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
§	Section
TFR	Temporary Final Rule
USC	United States Code
USCG	United States Coast Guard

II. Background Information and Regulatory History

On Thursday November 20, 2014, the Coast Guard published a NPRM in the Federal Register (79 FR 69078). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this security zone. No Public meetings were requested or held. Thirty formal written comments were received.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; 50 U.S.C 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1 which collectively authorizes the Coast Guard to establish security zones.

The John Joseph Moakley United States Courthouse houses the United States Court of Appeals for the First Circuit, the United States District Court for the District of Massachusetts, and the United States Attorney's Office for the District of Massachusetts. Consequently, high profile events and court proceedings take place at the Moakley Courthouse, resulting in a heightened security posture. With this in mind, the Captain of the Port, Sector Boston, has determined that a security zone is necessary to better protect and secure persons and property during high profile court proceedings and events.

Establishing a security zone on an ad hoc basis is administratively cumbersome and reduces the opportunity for public participation in the development of the rule. Thus, to lessen administrative overhead and to maximize public participation, this rule establishes a security zone near the courthouse that will remain in effect permanently but will be enforced only when deemed necessary by the COTP. The COTP will notify the public of the enforcement of this security zone by publishing a Notice of Enforcement (NOE) in the Federal Register and via the other means listed in 33 CFR 165.7. This permanent security zone will be published in 33 CFR 165.120.

IV. Discussion of Comments, Changes, and the Rule

We received ten comments on the NPRM to establish a permanent security zone within Sector Boston's COTP Zone. The NPRM proposed a five hundred (500) yard security zone that allowed vessels to enter the security zone, without permission, as long as such vessels proceeded through the area with caution and operated at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules, as published in 33 CFR Part 83 and remain beyond two hundred and fifty (250) yards of the Moakley Courthouse. Further, vessels could enter within two hundred and fifty (250) yards with permission of the COTP or the COTP's representative. The comments we received were primarily from owners, operators, and employees of commercial passenger vessels, including the daily commuter ferry vessels that transfer passengers at the Rowes Wharf Ferry Terminal. Other comments received were from the property management company of Rowes Wharf and a non-profit, public interest organization that promotes a clean, alive, and accessible Boston Harbor.

While none of the comments expressed concern with the proposed speed

restrictions, there were significant concerns with the two hundred and fifty (250) yard security zone, in that vessels could not enter without permission of the COTP. This area entails the entrance into Fort Point Channel and Rowes Wharf. Rowes Wharf is the number one passenger transfer marine ferry terminal in Boston Harbor. In each of the comments, the consensus was that a two hundred and fifty (250) yard enforced security zone could potentially disrupt the water transportation system of Boston Harbor, which would have serious economic impacts upon commercial operators.

In January 15, 2015, without adequate time to address the comments regarding the impact of the two hundred and fifty (250) yard security zone, the Coast Guard published a temporary final rule (TFR), entitled “Security Zone, John Joseph Moakley United States Courthouse; Boston, MA” (see 80 FR 2013) in preparation for the trial of the Boston Marathon bomber, Dzhokhar Tsarnaev, which reduced the restricted area to one hundred (100) yards. Publishing a new NPRM to reflect this change and delaying the effective date would have been impracticable and contrary to the public interest since it would have inhibited the Coast Guard’s ability to fulfill its statutory missions to protect people, property, and the Port of Boston from subversive acts during this high profile court proceeding. Accordingly, under 5 U.S.C. 553(d)(3), the Coast Guard found that good cause existed for publishing a TFR with an effective date within 30 days of publication in the Federal Register.

The TFR established a five hundred (500) yard security zone that allowed vessels to enter the security zone, without permission, as long as such vessels proceeded through the area with caution and operated at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules, and remain

beyond one hundred (100) yards of the Moakley Courthouse. Further, vessels could enter within one hundred (100) yards with permission of the COTP or the COTP's representative.

The Boston Marathon Trial lasted approximately six months. During this period while the TFR was being enforced, the Coast Guard received no negative comments. During multiple port partner meetings throughout that period, multiple entities who commented on the original NPRM, noted that the one hundred (100) yard security zone was not an issue, as it was having no impact on their business.

The COTP has decided, based on the input from the law enforcement personnel that enforced the security zone established by the TFR, and the formal comments made in response to the NPRM, to issue a final rule on the NPRM that would use a one hundred (100) yard security zone as used in the TFR vice a two hundred and fifty (250) yard security zone as proposed in the original NPRM. This modification to the NPRM would be both adequate to address the concerns articulated by the public and sufficient to protect and secure persons and property during high profile court proceedings and events at the John Joseph Moakley United States Courthouse, Boston, MA.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and (E.O.s) and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. First, based on the comments and feedback from the NPRM on the permanent security zone and the TFR on the temporary security zone, we feel that decreasing the two hundred and fifty (250) yards to one hundred (100) yards will minimize the impact to vessels, such as commuter ferries servicing Rowes Wharf, because they will be able to transit their normal routes. Second, the Courthouse is likely to shut down the harbor dock to water Taxis during trials. Third, mariners may still pass through the security zone, within one hundred (100) yards of the Moakley Courthouse, with authorization from the COTP or a designated on-scene representative. Finally, such notification of this security zone will be published by Notice of Enforcement (NOE) in the Federal Register, through the local Notice to Mariners, Broadcast Notice to Mariners, and through extensive public outreach.

B. 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 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 persons.

The Coast Guard received no comments from the Small Business Administration on this rulemaking. 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.

While some owners and operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have significant economic impact on any vessel owner or operator.

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 rule will 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” section.

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.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. 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.

F. Environment

We have analyzed this rule under Department of Homeland Security Management

Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined 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 final rule involves the establishment of a permanent security zone. This rule is categorically excluded from further review under, paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a 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.

G. 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.

List of Subjects in 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 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, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1

vessel may come within one hundred (100) yards of the Moakley Courthouse under any conditions unless given express permission from the COTP or the COTP's designated representatives.

(3) Any person or vessel permitted to enter the security zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the security zone shall exit the zone when directed by the COTP or the COTP's representatives.

(4) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617-223-5757 (Sector Boston Command Center) to obtain permission.

(5) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

(c) Effective and enforcement period. This security zone is in effect permanently but will only be enforced when deemed necessary by the COTP. Anyone, including members of federal, state or local law enforcement agencies, may request that this security zone be enforced.

(d) Notification. The COTP will notify the public of the enforcement of this security zone by publishing a Notice of Enforcement (NOE) in the Federal Register and via the other means listed in 33 CFR 165.7. Such notifications will include the date and times of enforcement, along with any pre-determined conditions of entry.

(e) COTP representative. The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, federal, state or local law enforcement or safety vessel, or a location on shore.

Dated: February 17, 2016

C. C. Gelzer
Captain, U.S. Coast Guard
Captain of the Port Boston
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