



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0115]

RIN 1625-AA87

Security Zone; North Atlantic Ocean, Approaches to Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary security zone encompassing certain waters of the North Atlantic Ocean. The security zone is necessary to prevent waterside threats before, during and after National Geospatial-Intelligence Agency equipment testing conducted offshore near Ocean City, MD, from April 25, 2021, through May 8, 2021. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Maryland-National Capital Region or his designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0115 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Samuel M. Danus, Waterways Management Division, U.S. Coast Guard; 410-576-2519, Samuel.M.Danus@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
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On February 17, 2021, the National Geospatial-Intelligence Agency (NGA) notified the Coast Guard that it will be conducting U.S. Government training and systems testing from 9 a.m. on April 25, 2021, through 10 p.m. on May 8, 2021. The training and testing will take place in two locations offshore of Ocean City, MD. The COTP Maryland-National Capital Region has determined that a security zone is needed for waterborne protection of the public, mitigation of potential terrorist acts, and the enhancing of public and maritime safety and security in order to safeguard life, property, and the environment on or near the navigable waters near Ocean City, MD.

The purpose of this rulemaking is to ensure the security of vessels and government equipment involved in this event by prohibiting vessels from entering the security zone. If a person or vessel has been granted permission to enter the zone, they must not enter waters within 1,000 yards of the on scene Coast Guard vessel or test equipment being used by Coast Guard personnel. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1232).

III. Discussion of Proposed Rule

The COTP is proposing to establish a security zone from 9 a.m. on April 25,

2021, through 10 p.m. on May 8, 2021. The security zone will be enforced from 9 a.m. to 10 p.m. on April 25, 2021, and those same hours on April 26, 2021, April 27, 2021, April 28, 2021, April 29, 2021, April 30, 2021, May 1, 2021, May 2, 2021, May 3, 2021, May 4, 2021, May 5, 2021, May 6, 2021, May 7, 2021 and May 8, 2021. The security zone will cover all waters of the North Atlantic Ocean, from surface to bottom, encompassed by a line connecting the following points beginning at 38°23'56" N, 074°48'06" W, thence south to 38°21'40" N, 074°48'33" W, thence south to 38°17'54" N, 074°49'57" W, thence southwest to 38°15'04" N, 074°51'44" W, thence northwest to 38°18'52" N, 074°54'24" W, thence north to 38°22'55" N, 074°52'44" W, and northeast back to the beginning point. The zone is approximately 9.3 nautical miles in length and 3.6 nautical miles in width. If a person or vessel has been granted permission to enter the zone, they must not enter waters within 1,000 yards of the on scene Coast Guard vessel or test equipment being used by Coast Guard personnel.

The duration of the rule and enforcement of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Coast Guard vessel and test equipment are being used. All vessels and persons must obtain permission from the COTP Maryland-National Capital Region or his designated representative before entering the security zone. Equipment testing operations may occur anywhere within the security zone during the enforcement periods. Vessels and persons will not be permitted to enter the security zone within 1,000 yards of the Coast Guard vessel or test equipment. While this 1,000 yards area lies within the security zone, its exact location within the security zone may change. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a

number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 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. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on location and duration of the security zone. This security zone will be enforced 182 hours over the course of a two week period. Vessels will be able to safely transit around the security zone, which impacts a small area of the North Atlantic Ocean, where vessel traffic is normally low. Additionally, the Coast Guard will make notifications to the maritime community via marine information broadcasts. The Coast Guard will update such notifications as necessary to keep the maritime community informed of the status of the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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. 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.

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

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

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 proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 Executive Order 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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves a security zone lasting only 182 total enforcement hours that will prohibit entry within a small portion of the North Atlantic Ocean. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 is proposing 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0115 to read as follows:

§ 165.T05-0115 Security Zone; North Atlantic Ocean, Approaches to Ocean City, MD.

(a) *Location.* The following is a security zone: All waters of the North Atlantic Ocean, from surface to bottom, encompassed by a line connecting the following points beginning at 38°23'56" N, 074°48'06" W, thence south to 38°21'40" N, 074°48'33" W, thence south to 38°17'54" N, 074°49'57" W, thence southwest to 38°15'04" N, 074°51'44" W, thence northwest to 38°18'52" N, 074°54'24" W, thence north to 38°22'55" N, 074°52'44" W, and northeast back to the beginning point. All coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section---

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means the Coast Guard commissioned, warrant, or petty officer operating the on scene Coast Guard vessel designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter the security zone described in paragraph (a) of this section, contact the COTP or the COTP's representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessel enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) A person or vessel operating in the security zone described in paragraph (a)(1) of this section must not enter waters within 1,000 yards of the on scene Coast Guard vessel or test equipment being used by Coast Guard personnel.

(d) *Enforcement periods.* This section will be enforced 9 a.m. to 10 p.m. on April 25, 2021, and those same hours on April 26, 2021, April 27, 2021, April 28, 2021, April 29, 2021, April 30, 2021, May 1, 2021, May 2, 2021, May 3, 2021, May 4, 2021, May 5, 2021, May 6, 2021, May 7, 2021 and May 8, 2021.

Dated: March 9, 2021

Joseph B. Loring,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.

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