



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2014-0246]

RIN 1625-AA87

Security Zone, John Joseph Moakley United States

Courthouse, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The United States Coast Guard proposes to establish 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. Enforcement of this permanent security zone during high profile court proceedings at the Moakley Courthouse is necessary to protect people, property, and the port of Boston from subversive acts.

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]**.

Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 10 DAYS AFTER DATE OF**

**PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2014-0246 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed 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](mailto:Mark.E.Cutter@uscg.mil). If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
CFR	Code of Federal Regulations
COTP	Captain of the Port
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2014-0246), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received

at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0246) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

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

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.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## B. Regulatory History and Information

In previous years, the U.S. Coast Guard has received requests from federal and state law enforcement agencies to

establish a temporary security zone in the vicinity of the John Joseph Moakley United States Courthouse on a case-by-case basis to facilitate the security and safety of persons and property during high profile court proceedings. The Coast Guard now proposes to create a permanent rule that will create a permanent security zone in the vicinity of the courthouse to be enforced on a case-by-case basis at the discretion of the COTP.

### C. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 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; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize 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, such as the ongoing prosecution related to the Boston Marathon bombing, often 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 proposes to establish a security zone near the courthouse that will remain in effect permanently but will be enforced only when deemed necessary by the COTP. This permanent security zone will be published in Title 33 Code of Federal Regulations (CFR) Part 165.

D. Discussion of Rule

For the reasons explained above, the COTP Boston proposes to establish a security zone encompassing all U.S. navigable waters, from surface to bottom, within five hundred (500) yards of the John Joseph Moakley United States Courthouse (Moakley Courthouse) in Boston, MA and following any natural waterside seawall configuration enclosed by a line connecting the following points:

Latitude                      Longitude

42°21'15" N              71°02'54" W; Bounded by the curvature of

the seawall, thence to  
42°21'13" N      71°02'27" W; thence to  
42°21'25" N      71°02'17" W; thence to  
42°21'32" N      71°02'54" W; Bounded by the curvature of  
the seawall, thence to  
42°21'18" N      71°03'01" W; thence to point of origin.

While this proposed security zone is being enforced, no person or vessel may enter or remain in it without the permission of the COTP. However, the COTP proposes to grant standing permission to enter the security zone to any vessel that goes no faster than that speed necessary to maintain a safe course, unless otherwise required by Navigation Rules and as long as such vessels remain beyond two hundred and fifty (250) yards of the Moakley Courthouse. Under certain circumstances and depending on security needs of a given situation, the COTP may predetermine before an enforcement period begins to make these standing conditions of entry less restrictive.

Regardless of the conditions of entry, any person or vessel permitted to enter the security zone must comply with the directions and orders of the COTP or the COTP's representative while said person or vessel is within the five-hundred (500) yard zone. To obtain the permissions required by this proposed regulation, individuals may reach the COTP or the COTP's representative via VHF channel 16 or 617-223-5757 (Sector Boston Command Center) to obtain

permission.

This proposed security zone will be in effect permanently but will only be enforced when deemed necessary by the COTP. Anyone, including members of federal or state law enforcement agencies, may request that this security zone be enforced. 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. Regulatory Analyses

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

##### 1. Regulatory Planning and Review

This proposed 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) of Executive Order 12866 or under section 1 of Executive Order 13563. The

Office of Management and Budget has not reviewed it under these Orders.

The Coast Guard expects minimal adverse impact on mariners from this security zone's enforcement for the following reasons. First, the security zone is expected to be enforced only a few weeks at a time and on only a few occasions per year. Second, the minimum speed necessary to maintain a safe steerageway, within five hundred (500) yards of the Moakley Courthouse closely mirrors the City of Boston's six (6) knots speed restrictions for Boston Inner Harbor. Third, the Coast Guard designed the security zone to have as minimal geographical application as possible and will permit traffic in the Fort Point Channel via law enforcement vessel escort. While water taxis servicing the Harbor Dock on the premises of the Moakley Courthouse may be impacted during an enforcement period, such impact should be minimal as the Harbor Dock at the courthouse will likely be shutdown during high profile events, and if not, the COTP is expected to permit vessels to enter via law enforcement vessel escort. Though the regular schedule commuter ferries that service Rowes Wharf will also have to transit through the two hundred and fifty (250) yard security zone, it is expected that the COTP will authorize them permission to transit through upon initial

notification to the COTP or the designated on-scene representative. Fourth, mariners may pass through the security zone with authorization from the COTP or the designated on-scene representative. Finally, as mentioned previously, the Coast Guard will provide advance notification to the public anytime it intends to enforce the security zone. Such notification will be made in advance through an NOE published in the Federal Register and also through the local Notice to Mariners and Broadcast Notice to Mariners.

## 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 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. REGULATORY PLANNING AND REVIEW section, 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.

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

that this rule would have 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.

### 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 rule 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. 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 proposed rule will not call for a 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 proposed 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 proposed rule will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed 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 proposed 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 from Environmental Health Risks

We have analyzed this proposed 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 proposed 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 proposed rule 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action may be one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This proposed rule involves the establishment of a security zone and thus, may be categorically excluded from

further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination will be 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 proposed rule.

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 proposes 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: 33 U.S.C. 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; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.120 to read as follows:

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

(a) Location. This security zone encompasses all U.S. navigable waters, from surface to bottom, within five hundred (500) yards of the John Joseph Moakley United States Courthouse (Moakley Courthouse) in Boston, MA, and following any natural waterside seawall configuration enclosed by a line connecting the following points from: 42°21'15" N, 71°02'54" W bounded by the curvature of the seawall; thence to 42°21'13" N, 71°02'27" W; thence to 42°21'25" N, 71°02'17" W; thence to 42°21'32" N, 71°02'54" W bounded by the curvature of the seawall; thence to 42°21'18" N, 71°03'01" W; thence to point of origin.

(b) Regulations. While this security zone is being enforced, the following regulations, along with those contained in 33 CFR 165.33, apply:

(1) No person or vessel may enter or remain in this security zone without the permission of the Captain of the Port (COTP), Sector Boston. However, the COTP hereby grants vessels permission to enter this security zone as long as such vessels remain beyond two hundred and fifty (250) yards of the Moakley Courthouse and as long as such vessels go no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules. Under certain circumstances and depending on security needs of a given situation, the COTP may

predetermine before an enforcement period begins to make these entry conditions less restrictive.

(2) Although vessels have permission to enter the security zone under the conditions mentioned in the preceding paragraph, no person or vessel may come within two hundred and fifty (250) yards of the Moakley Courthouse under any conditions unless given express permission from the COTP or the COTP's designated representative. As mentioned in the preceding paragraph, the COTP may chose before an enforcement period begins to make this entry condition less restrictive. In other words, the COTP may predetermine that vessels allowed to conditionally enter the security zone may come closer to the courthouse than the two hundred and fifty (250) yards mentioned above.

(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 representative. Upon being hailed by a U.S. Coast Guard vessel 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 representative.

(4) To obtain permissions required by this regulation, individuals may reach the COTP or the COTP's 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 or state 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, a state or local law enforcement vessel, or a location on shore.

Dated: November 5, 2014.

J.C. O'Connor III,  
Captain, U.S. Coast Guard,  
Captain of the Port Boston.

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