



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-1088]

RIN 1625-AA00

Safety Zone; Pleasure Beach Bridge, Bridgeport, CT.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the Coast Guard Sector Long Island Sound (LIS) Captain of the Port (COTP) Zone. This temporary final rule is necessary to provide for the safety of life on navigable waters. Entry into, transit through, mooring or anchoring within the safety zone is prohibited unless authorized by COTP Sector LIS.

DATES: This rule is effective without actual notice from 12:01 a.m. on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until 12 a.m. on January 01, 2016. For the purposes of enforcement, actual notice will be used from the date the rule was signed, December 10, 2015, until **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2015-1088]. 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 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Lieutenant Junior Grade Martin Betts, Prevention Department, Coast Guard Sector Long Island Sound, telephone (203) 468-4432, e-mail Martin.B.Betts@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive order
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum 1983

II. Background Information and Regulatory History

This rulemaking establishes a safety zone for the waters around Pleasure Beach Bridge, Bridgeport, CT. Corresponding regulatory history is discussed below.

The Coast Guard was made aware of damage sustained to Pleasure Beach Bridge, the result of which created a hazard to navigation.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. There is insufficient

time to publish an NPRM and solicit comments from the public before establishing a safety zone to address an existing hazard to navigation. The nature of the navigational hazard requires the immediate establishment of a safety zone. Publishing an NPRM and delaying the effective date of this rule to await public comment inhibits the Coast Guard's ability to fulfill its statutory mission to protect ports, waterways and the maritime public.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5 and Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

On December 09, 2015, the Coast Guard was made aware of damage sustained to Pleasure Beach Bridge, Bridgeport, CT that has created a hazard to navigation. The COTP Sector LIS has determined that the safety zone established by this temporary final rule is necessary to provide for the safety of life on navigable waterways.

IV. Discussion of the Rule

The safety zone established by this rule will cover all navigable waters of the entrance channel to Johnsons Creek in the vicinity of Pleasure Beach Bridge, Bridgeport, CT. This safety zone will be bound inside an area that starts at a point on land at position 41-10.2N, 073-10.7W and then east along the shoreline to a point on land at position 41-9.57N, 073-9.54W and then south across the channel to a point on land at position 41-9.52N, 073-9.58W and then west along the shoreline to a point on land at position 41-9.52N, 073-10.5W and then north across the channel back to the point of origin.

This rule prevents vessels from entering, transiting, mooring, or anchoring within the area specifically designated as a safety zone during the period of enforcement unless authorized by the COTP or designated representative.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the Federal Register, the Local Notice to Mariners, and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and 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 determined that this rulemaking is not a significant regulatory action for the following reasons: 1) the enforcement of this safety zone will be relatively short in duration; 2) persons or vessels desiring to enter the safety zone may do so with permission from the COTP Sector LIS or a designated representative; 3) this safety zone is designed in a way to limit impacts on vessel traffic, permitting vessels to navigate in other portions of the waterway not designated as a safety zone; and 4) the Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local

Notice to Mariners and Broadcast Notice to Mariners to increase public awareness of this safety zone.

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. 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.

This temporary final rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor, or moor within a safety zone during the period of enforcement, from December 10, 2015 to January 1, 2016. However, this temporary final rule will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in the Regulatory Planning and Review section.

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 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 proposed 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 an 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 temporary rule involves the establishment of a safety zone. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination, and EA Checklist, WILL BE in the docket for review. 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 record keeping requirements, Security Measures, and 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 and Department of Homeland Security Delegation No. 0170.1

2. Add §165.T01-1088 to read as follows:

§165.T01-1088 Safety Zone; Pleasure Beach Bridge, Bridgeport, CT.

(a) Location. The following area is a safety zone: All navigable waters of the entrance channel to Johnsons Creek in the vicinity of Pleasure Beach Bridge, Bridgeport, CT bound inside an area that starts at a point on land at position 41-10.2N, 073-10.7W and then east along the shoreline to a point on land at position 41-9.57N, 073-9.54W and then south across the channel to a point on land at position 41-9.52N, 073-9.58W and then west along the shoreline to a point on land at position 41-9.52N, 073-10.5W and then north across the channel back to the point of origin.

(b) Enforcement period. This rule will be enforced from 12 p.m. on December 10, 2015, to 12 a.m. on January 1, 2016.

(c) Definitions. The following definitions apply to this section: A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with

vessels via VHF-FM radio or loudhailer. “Official patrol vessels” may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

- (a) Regulations. (1) The general regulations contained in 33 CFR 165.23 apply.
- (2) In accordance with the general regulations in 33 CFR 165.23, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.
- (3) Operators of vessels desiring to enter or operate within the safety zone should contact the COTP Sector Long Island Sound at 203-468-4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so.
- (4) Any vessel given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Sector Long Island Sound, or the designated on-scene representative.
- (5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

Dated: December 10, 2015

E. J. Cubanski, III
Captain, U. S. Coast Guard,
Captain of the Port Sector Long Island Sound

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