



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2016-0462]**

**RIN 1625-AA00**

**Safety Zone; Hudson River, South Nyack and Tarrytown, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone for navigable waters of the Hudson River within a 200-yard radius of the LEFT COAST LIFTER crane barge during heavy lift operations. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by heavy lift operations conducted by the crane barge in the vicinity of the Tappan Zee Bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2018. For the purposes of enforcement, actual notice will be used from June 22, 2016 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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-2016-0462 using

the *Federal e-Rulemaking Portal* at <http://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 on this rule, call or email MST1 Kristina Pundt, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4352, email [Kristina.H.Pundt@uscg.mil](mailto:Kristina.H.Pundt@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

COTP	Captain of the Port
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
NYSTA	New York State Thruway Authority
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary 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 a NPRM with respect to this rule because publishing a NPRM would be impracticable. A delay or cancellation of the currently ongoing bridge project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the bridge is expected to

reopen for normal operations. For these reasons, the Coast Guard finds it impracticable to delay this regulation for purposes of a comment period.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable for the same reasons specified above.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that the potential hazards associated with the LEFT COAST LIFTER's cable and anchor system create a serious safety concern for anyone transiting within a 200-yard radius of the LEFT COAST LIFTER during heavy lift operations. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while constructing the New NY Bridge and demolishing the existing Tappan Zee Bridge.

Construction on the Tappan Zee Bridge replacement project began on October 1, 2013. Heavy lift operations to install the new bridge superstructure over the Hudson River have presented new safety hazards and risks to vessels transiting the area due to the Left Coast Lifter's crane barge four-point anchor and cable system deployed while lifting heavy loads over the navigable waters of the Hudson River. The anchor and cable system extends outward from the crane barge, up to 200 yards, in four varying directions, at various heights above, and below, the water surface of the Hudson River. This presents a risk to mariners who may become entangled in the anchor cable system if they transit too close to the crane barge. We believe that a safety zone is needed to protect mariners during this period of construction.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from June 22, 2016, through December 31, 2018. The safety zone will cover all navigable waters of the Hudson River within 200 yards of the crane barge LEFT COAST LIFTER. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during heavy lift operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this 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. Executive Order 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 Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. The implementation of this temporary safety zone is necessary for the protection of all waterway users. The size of the zone is the minimum necessary to provide adequate protection for the waterway users, adjoining areas, and the public. Vessel traffic will be able to safely transit around this safety zone. Any hardships experienced by persons or vessels are considered minimal compared to the interest in protecting the public.

## 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 rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a 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 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 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 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 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 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. 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 rule involves a safety zone that will prohibit entry within 200 yards of the crane barge LEFT COAST LIFTER during heavy lift operations. 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 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 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.

### **VI. 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 <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, 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 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.

2. Add § 165.T01-0462 to read as follows:

§ 165.T01-0462 Safety Zone; Tappan Zee Bridge Construction Project, Hudson River, South Nyack and Tarrytown, NY.

(a) Location. The following area is a safety zone: All navigable waters within 200 yards of the crane barge LEFT COAST LIFTER while conducting heavy lift operations on the Hudson River.

(b) Definitions. As used in this section, designated representative means is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated representative may be on a Coast Guard vessel or New York State Police, Westchester County Police, Rockland County Police, or other designated craft; or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-FM channel 16 or by phone at (718) 354-4353 (Sector New York Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or a COTP designated representative.

(d) Enforcement period. This section will be enforced from June 22, 2016 through December 31, 2018.

Dated: June 22, 2016

M. H. Day,  
Captain, U.S. Coast Guard,  
Captain of the Port New York.

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