



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0257]

RIN 1625-AA00

Safety Zone; Chapel Street over Mill River Bridge Rehabilitation – New Haven, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Mill River in New Haven, CT around the Chapel Street Bridge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the Mohawk Northeast, Inc. Chapel Street Bridge Rehabilitation Project. When enforced, this regulation prohibits entry of vessels or people into the safety zone unless authorized by the Captain of the Port Sector Long Island Sound.

DATES: This rule is effective without actual notice from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through May 26, 2017. For the purposes of enforcement, actual notice will be used from April 1, 2017, through **[INSERT DATE OF 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-2017-0257 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, contact Petty Officer Katherine Linnick, Prevention Department, U.S. Coast Guard Sector Long Island Sound, telephone (203) 468-4565, e-mail Katherine.E.Linnick@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LIS	Long Island Sound
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum 1983
CFR	Code of Federal Regulations
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On March 6, 2017, Sector Long Island Sound was made aware of a bridge rehabilitation project for the Chapel Street Bridge over the Mill River in New Haven, CT. The COTP Sector LIS has determined that the potential hazards associated with the bridge rehabilitation project will be a safety concern for anyone within the work area.

The project is scheduled to begin on April 1, 2017 and be completed by May 26, 2017. During this project, masonry repairs, fender system repairs, mechanical system replacement, and upgrades to the superstructure will take place. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The safety zone will be enforced during two brief periods when work barges will be placed in the navigable channel during structural steel replacement or when other hazards to navigation arise. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 24 hours in advance to any period of enforcement or as soon as practicable in response to an

emergency. If the project is completed prior to May 26, 2017, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners.

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. The late finalization of project details did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the construction work is set to begin. It would be impracticable and contrary to the public interest to delay promulgating this rule as it is necessary to protect the safety of the public and waterway users.

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. The COTP Sector LIS has determined that potential hazards associated with the bridge rehabilitation project starting on April 1, 2017 and continuing through May 26, 2017 will be a safety concern for anyone within the work zone. This rule is needed to protect personnel, vessels, and the marine environment within the safety zone while the bridge rehabilitation project is completed.

IV. Discussion of the Rule

This rule establishes a safety zone from 6:00 a.m. on April 1, 2017 through 9:00 p.m. on May 26, 2017. The safety zone will cover all navigable waters of Mill River in New Haven, CT around the Chapel Street Bridge: beginning at a point in position at 41°18'14" N, 072°54'21" W north of the Chapel Street Bridge; then east across Mill River to a point in position at 41°18'14" N, 072°54'18" W; then south to a point in position at 41°18'11" N, 072°54'18" W; then west across Mill River to a point in position at 41°18'11" N, 072°54'21" W; then north across Chapel Street Bridge back to point of origin (NAD 83). All positions are approximate. The duration of the zone is intended to protect people, vessels, and the marine environment in these navigable waters during the Mohawk Northeast, Inc. Chapel Street Bridge Rehabilitation Project. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a 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 via VHF-FM marine channel 16 in advance of any scheduled enforcement period. The regulatory text we are enforcing appears at the end of this document.

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. The Coast Guard has determined that this rulemaking is not a significant regulatory action for the following reasons: 1) The safety zone only impacts a small designated area of the Mill River during a time of year when vessel traffic is normally low, 2) the zone will only be enforced temporarily when work barges will be placed in the navigable channel during structural steel replacement or if necessitated by an emergency, 3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP Sector LIS or a designated representative. 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.

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 this regulated area 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 calls for no 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 made a 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 temporary rule involves a safety zone enforced from April 1, 2017 through May 26, 2017 that will prohibit entry within the work zone during the bridge rehabilitation project. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. An

environmental analysis checklist and 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 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.T01-0257 to read as follows:

§ 165.T01-0257 Safety Zone; Chapel Street over Mill River Bridge Rehabilitation Project—

New Haven, CT.

(a) Location: The following area is a safety zone: All navigable waters of Mill River in New Haven, CT around the Chapel Street Bridge: beginning at a point in position at 41°18'14" N, 072°54'21" W north of the Chapel Street Bridge; then east across Mill River to a point in

position at 41°18'14" N, 072°54'18" W; then south to a point in position at 41°18'11" N, 072°54'18" W; then west across Mill River to a point in position at 41°18'11" N, 072°54'21" W; then north across Chapel Street Bridge back to point of origin (NAD 83). All positions are approximate.

(b) Effective and enforcement period. This rule will be effective from 6:00 a.m. on April 1, 2017 through 9:00 p.m. on May 26, 2017 but will only be enforced during structural steel replacement or other instances which may cause a hazard to navigation, when deemed necessary by the Captain of the Port (COTP), Sector Long Island Sound.

(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 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 Long Island Sound. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation. A “work vessel” is any vessel provided by Mohawk Northeast, Inc. for the Chapel Street Bridge Rehabilitation Project and may be hailed via VHF channel 13 or 16.

(d) 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 COTP Long Island Sound.

- (3) Operators of vessels desiring to enter or operate within the safety zone should contact the COTP Long Island Sound at 203-468-4401 (Sector Long Island Sound command center) or the designated representative on scene via VHF channel 16 to obtain permission to do so.
- (4) Mariners are requested to cooperate with the Mohawk Northeast, Inc. project work vessels for the safety of all concerned. The Mohawk Northeast, Inc. project work vessels will be monitoring VHF channels 13 and 16.
- (5) Any vessel given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Long Island Sound, or the designated on scene representative.
- (6) 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: March 31, 2017

A.E TUCCI,
CAPTAIN, U. S. Coast Guard,
Captain of the Port Sector Long Island Sound.

[FR Doc. 2017-08219 Filed: 4/21/2017 8:45 am; Publication Date: 4/24/2017]