



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0801]

RIN 1625-AA00

Safety Zone; Atlantic Intracoastal Waterway, Socastee, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; request for comments.

SUMMARY: The Coast Guard is establishing an intermittent safety zone related to ongoing construction of South Carolina Highway 31 (SC-31) Bridge located in Socastee, SC on the Atlantic Intracoastal Waterway at mile marker 372.3. The temporary safety zone will be set one day per week during overhead construction operations. The safety zone is needed to ensure the safety of persons, vessels, and the marine environment from potential hazards created by the bridge construction. Details for specific dates and times will be relayed via Sector Charleston Marine Safety Information Bulletin and Seventh District Local Notice Mariners. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this rulemaking.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until March 19, 2018. Comments and related materials 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-2017-0801

using the Federal eRulemaking 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. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0801 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, e-mail Justin.C.Heck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
OMB	Office of Management and Budget

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 notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond to the potential

safety hazards associated with bridge construction operations that are scheduled to begin on October 16, 2017. The Coast Guard was initially notified of the need for a safety zone on August 8, 2017. Hurricane Irma impacted the timeline for commencement of the project and the Coast Guard received updated plans for the construction operations on September 18, 2017. Therefore, publishing an NPRM is impracticable and contrary to public interest.

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

III. 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, visit <http://www.regulations.gov/privacyNotice>.

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.

IV. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Charleston has determined that potential hazards associated with the bridge construction starting October 16, 2017 will be a safety concern for anyone within a 200-yard radius of the bridge, vessels, and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the construction is in progress.

V. Discussion of the Rule

This rule establishes an intermittent safety zone related to construction of the South Carolina Highway 31 (SC-31) Bridge located in Socastee, SC on the Atlantic Intracoastal Waterway at mile marker 372.3. The temporary safety zone will be set during overhead construction operations starting October 16, 2017 and ending March 19, 2018. The safety zone is scheduled to take place one day per week between 7 a.m. and 4 p.m. The safety zone is needed to ensure the safety of persons, vessels, and the marine environment from potential hazards created by the bridge construction. The safety zone will cover all navigable waters within 200 yards of the bridge, vessels, and machinery. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zone without first obtaining permission from the Captain of the Port Charleston or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast

Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

VI. 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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the following reasons: (1) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (2) the Coast Guard will provide advance notification of the safety zone to the local maritime community by 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 the safety zone may be small entities, for the reasons stated in section VI.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 an intermittent safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area surrounding the SC-31 Bridge on the Atlantic Intracoastal Water Way. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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 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, 160.5; and Department of Homeland Security Delegation No. 0170.

2. Add § 165.T07-0801 to read as follows:

§ 165.T07-0801 Safety Zone; Atlantic Intracoastal Waterway, Socastee, SC

(a) Location. All waters of the Atlantic Intracoastal Waterway encompassed within a 200-yard radius of South Carolina Highway 31 (SC-31) Bridge located in Socastee, SC on the Atlantic Intracoastal Waterway at mile marker 372.3, and vessels or machinery associated with the construction.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement period. This rule will be enforced one day per week from October 16, 2017

through March 19, 2018, during construction activities. Details for specific dates and times will be relayed via Sector Charleston Marine Safety Information Bulletin and Seventh District Local Notice to Mariners.

Dated: October 3, 2017

John W. Reed
Captain, U.S. Coast Guard
Captain of the Port Charleston

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