



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0705]

RIN 1625-AA00

Regulated Navigation Area and Safety Zone: Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is extending the effective period of the temporary regulated navigation areas and safety zone for the navigable waters of the Hudson River, NY, surrounding the Tappan Zee Bridge. This rule will extend the effective period of the existing temporary interim rule for an additional year, now ending on December 31, 2019. This rule will continue to prohibit all persons and vessel traffic from the safety zone and enforce speed and wake restrictions for the Eastern and Western regulated navigation areas as cited in this rule unless exceptions are authorized by the First District Commander or a designated representative. These regulated navigation areas and safety zone continue to be necessary to protect personnel, vessels, and the marine environment from potential hazards during the removal of the existing Tappan Zee Bridge and construction of a new bridge.

DATES: The effective period of §165.T01-0174 is extended to December 31, 2019. The amendments in this rule are effective from December 31, 2018, through December

31, 2019.

Comments and related material must be received by the Coast Guard on or before April 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2013-0705 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG-2013-0705 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Craig Lapiejko, Waterways Management at Coast Guard First District, telephone 617-223-8351, e-mail craig.lapiejko@uscg.mil or, Mr. Jeff Yunker, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718-354-4195, e-mail jeff.m.yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|----------------------------------|
| CFR | Code of Federal Regulations |
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NYSTA | New York State Thruway Authority |
| RNA | Regulated Navigation Area |
| NPRM | Notice of proposed rulemaking |
| TIR | Temporary Interim Rule |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

On September 26, 2013, the Coast Guard published a temporary interim rule (TIR) establishing a regulated navigation area (RNA) on the navigable waters of the Hudson River, NY, for the Tappan Zee Bridge replacement project (78 FR 59231). We received no comments on the September 26, 2013, TIR. No public meeting was requested, and none was held. Construction on the Tappan Zee Bridge replacement project began on October 1, 2013.

On July 25, 2014, the Coast Guard published a change to the original TIR which established a new safety zone and expanded the RNA to create both an Eastern and Western RNA for the Tappan Zee Bridge replacement project on navigable waters of the Hudson River, NY (79 FR 43250). We received two comments on the July 25, 2014, TIR. The first comment referenced an unrelated rulemaking effort to establish anchorage locations along the Hudson River. The second comment merely provided the environmental checklist for the TIR. No public meeting was requested, and none was held.

Today's TIR extends the effective period of the rule for one year until December 31, 2019, due to delays of the Tappan Zee Bridge replacement project.

On August 23, 2018, the NYSTA requested the RNAs and safety zone be extended until December 31, 2019, to complete all remaining contract operations in and over the Hudson River, including, but not limited to steel erection, concrete bridge deck placements, installation of navigation lighting, and removal of the original Tappan Zee Bridge.

The Coast Guard is issuing this temporary interim 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 doing so would be impracticable and contrary to the public interest. The notice allowing the construction project to proceed and providing updated timelines for the project was only recently finalized and provided to the Coast Guard, which did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before the existing regulation expires. Timely action is needed to respond to the potential safety hazards associated with removal of the original bridge and construction of a new replacement bridge. It would be impracticable and contrary to the public interest to publish a NPRM because we must extend the effective period of the safety zone and RNAs as soon as possible to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project. A delay of the project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the completion date of the bridge project and subsequent reopening of the Hudson River for normal operations.

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**. For reasons stated in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to the public interest because timely action is needed to respond to the potential safety hazards associated with the project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

The First District Commander has determined that potential hazards exist associated with this bridge construction, and removal project that has already commenced, and will continue through December 31, 2019, will be a safety concern for anyone within the work zone. The construction and removal of the bridge continues to be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the Hudson River, and along the length of the bridge. In order to mitigate the inherent risks involved with the removal of a bridge, and installation of the new bridge, it is necessary to control vessel movement through the area. The purpose of this TIR is to ensure the safety of waterway users, the public, and construction workers for the duration of the new bridge construction and demolition. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, any vessel transiting through the Western and Eastern RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor, or loiter within the RNA at any time unless they are working on the bridge construction operations. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters of the Hudson River, NY, during the bridge project.

IV. Discussion of the Rule

This rule extends the effective period of the temporary interim rule for the navigable waters of the Hudson River, NY, surrounding the Tappan Zee Bridge for one

additional year until December 31, 2019. There are no other changes to the regulatory text of this rule as cited in 33 CFR §165.T01-0174. This rule will continue to prohibit all persons and vessel traffic from the safety zone and enforce speed and wake restrictions for the Eastern and Western RNAs unless exceptions are authorized by the First District Commander 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 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, it 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: Vessel traffic would only be restricted from the Eastern RNA for limited durations. The Eastern RNA covers only a small portion of the navigable waterway which includes the Federal navigation channel. Furthermore, while the Federal navigation channel on the Hudson River is closed, vessels that can safely navigate outside the channel may still be able to transit through the Western RNA or the portion of the Eastern RNA which does not

encompass the Federal Navigation channel, depending on the project schedule and location of project vessels in these areas. The Coast Guard does not expect to receive any additional requests to close the entire Federal navigation channel in 2019, based upon the current construction progress, except in case of an emergency.

Advance public notifications will also be made to local mariners through appropriate means, which may include but are not limited to, Local Notice to Mariners, Broadcast Notice to Mariners, and the Boater Safety Information section of the project website at <http://www.newnybridge.com>.

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 would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNAs and safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant 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 temporary interim 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 would 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.

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 would 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 Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary 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 rule involves extending the effective time for one year restricting vessel movement within regulated navigation areas and safety zone on the navigable waters of Hudson River in vicinity of the Tappan Zee Bridge construction project. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration for Categorically Excluded Actions is 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 temporary interim 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, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this TIR 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. Amend §165.T01-0174 by revising the introductory text of paragraph (d) to read as follows:

§165.T01-0174 Regulated Navigation Areas and Safety Zone Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY.

* * * * *

(d) Enforcement periods. This regulation will be enforced 24 hours a day from 11:59 p.m. on December 31, 2018 until 11:59 p.m. on December 31, 2019.

* * * * *

Dated: December 18, 2018

ANDREW J. TIONGSON,
REAR ADMIRAL, U.S. Coast Guard,
Commander, First Coast Guard District.
[FR Doc. 2018-27669 Filed: 12/20/2018 8:45 am; Publication Date: 12/21/2018]