



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0286]

RIN 1625-AA00

Safety Zone; Shrewsbury River, S-32 Bridge, Boroughs of Rumson and Sea Bright,

NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Shrewsbury River, within a 100-yard radius of the center point of the S-32 Bridge on County Route 520 (Rumson Road), in the boroughs of Rumson and Sea Bright, New Jersey. The safety zone will include the East and West navigational channels and will temporarily close down a portion of the Shrewsbury River under and adjacent to the S-32 Bridge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the bridge construction. When enforced, entry of vessels or persons into this zone during the enforcement periods is prohibited unless specifically authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective from December 1, 2023, through December 31, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0286 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call, or email MST1 Melanie Hughes, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4352, email Melanie.A.Hughes1@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On March 15, 2023, the Coast Guard received notification from WSP USA Inc. requesting to close a portion of the Shrewsbury River for the replacement of the S-32 Bridge on County Route 520 (Rumson Road) over the Shrewsbury River in the Boroughs of Rumson and Sea Bright, NJ; Federal Project No. STBGP-0520(300); NJDOT Job No. 6700352. In response, on May 23, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Shrewsbury River, S-32 Bridge, Boroughs of Rumson and Sea Bright, NJ” (88 FR 33054). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended June 22, 2023, we received one comment, that is discussed in section IV below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with replacement of the S-32 Bridge that will impact navigation along the Shrewsbury River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port New York (COTP) has determined that potential hazards associated with the bridge construction would be a safety concern for anyone within a 100-yard radius of the center point of the bridge. The purpose of this rulemaking is to protect personnel, vessels, and the marine environment from potential hazards created by the S-32 Bridge construction activities within a 100-yard radius.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published May 23, 2023. The comment is in favor of the rule, however identified a variety of concerns including channel reduction and impact on velocity of current, on scene management of vessel traffic, project background, and the time of year for a portion of the waterway closures. Additionally, as you will notice as we address the comments below, we have made a change to the effective dates of the rule to account for a delay in the start date.

The commenter expressed concerns with the reduced horizontal clearance of 37 feet and increasing the velocity of the current and vessels losing steerage and causing collisions and distress calls. The commenter stated that they lost steerage transiting the present draw bridge with an oncoming vessel, spun a full 180-degrees and hit the bridge fender system to avoid a collision. They also recommended a safety watch during the height of the summer season.

Coast Guard is working closely with affected stake holders to ensure the full and partial channel closures will occur outside the peak recreational boating season. We will notify USCG Station Sandy Hook and New Jersey State Marine Police Carteret Station for their awareness during patrols. Also, the Coast Guard will ensure adequate notice and of this safety zone to mariners through dissemination of information through the Local Notice to Mariners. NOAA has also included the “Bridge under construction” label on

Chart 12325 at <<https://charts.noaa.gov/PDFs/12325.pdf>> to increase awareness among mariners.

The commenter stated there should be a safety presence directing marine traffic and not just a bridge tender who is worried about the bridge operation. The Coast Guard does not have the physical assets to provide a daily on scene presence during the enforcement periods. We will notify USCG Station Sandy Hook and New Jersey State Marine Police Carteret Station for their awareness during patrols.

The commenter stated this rulemaking proposal did not start on March 15, 2023, with the request for waterway restrictions, nor in the past 75 days.

The commenter also stated it is not a good idea for even a partial channel closure for a majority of the boating season and should occur after November 30 and before April 1.

The Coast Guard proceeded with the rulemaking request once sufficient information was provided, as required by 33 CFR 165.5 establishment procedures.

The commenter stated “there is multiple 180-foot by 64-foot crane barge spudded down in the channel while conducting heavy lift operations each week at the new bridge. We are not building the Tappan Zee Bridge here.” The Coast Guard is receiving regular updates regarding the project’s construction timelines. The current project schedule calls for one, 180-foot by 64-foot crane barge to spud down in the channel for five days. The Coast Guard does not determine the type of machinery used on construction projects.

There are two updates to the information shared in the NPRM about the project. First, The Coast Guard is receiving regular updates regarding the project’s scheduled timelines. The Coast Guard will publish any changes to the full channel closure dates in the Local Notice to Mariners. The public is urged to visit

<https://www.rumsonseabrightbridge.com/> for the most up to date information on

timelines. Second, the half-channel closure horizontal clearance will be 37 feet 6 inches instead of the originally published 37 feet.

As noted above there is one change to the regulatory text of this rule from the proposed rule in the NPRM. The Coast Guard is publishing this rulemaking to now be effective and enforceable from December 1, 2023, to account for delays, through December 31, 2024, as originally stated. This rule now establishes a safety zone from December 1, 2023, through December 31, 2024, but will only be enforced during periods when heavy lift operations are in progress. The first full channel closure is anticipated to take place sometime between January 2024 and March 2024. The Federal navigation channel closure is due to a 180-foot by 64-foot crane barge spudded down in the channel while conducting heavy lift operations.

The remainder of the bridge construction activities will partially close the channel allowing marine traffic to pass on either the east half or the west half of the channel. During these partial closures, the channel will be reduced to a width of 37 feet, 6 inches. The Coast Guard is working closely with stakeholders to ensure full and partial closures will occur outside of the peak recreational boating season. The safety zone covers all navigable waters of the Shrewsbury River within 100 yards of the center point of the S-32 Bridge. The duration of the zone is intended to ensure the safety of personnel, vessels, and these navigable waters during the bridge construction. During periods of heavy lift operations, no vessel or person would 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. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and time-of-day of the safety zone. This rule may affect owners or operators of vessels intending to transit the Shrewsbury River within a 100-yard radius of the center point of the S-32 Bridge, some of which might be small entities. However, this safety zone will not have a significant economic impact on a substantial number of these entities because it is temporarily enforced, allows for deviation requests, and does not impact vessel transit significantly. Regarding the enforcement period, although this safety zone will be in effect from December 1, 2023, through December 31, 2024, vessels will only be prohibited from the regulated zone during periods of heavy lift operations in correspondence to the period of enforcement. Vessels will also be able to request deviation from this rule to transit through the safety zone during enforcement periods. Such requests would be considered on a case by-case basis and may be authorized by the COTP or a designated representative. For these reasons, the Coast Guard expects any impact of this rulemaking establishing a temporary safety zone on Shrewsbury River within a 100-yard radius of the center point of the S-32 Bridge to be minimal and have no significant economic impact on small entities. The Coast Guard will notify the public of the enforcement periods of this rule through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16.

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 received no comments from the Small Business Administration on this rulemaking. 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 call or email 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.

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 Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 establishing a safety zone on all navigable waters of the Shrewsbury River, within a 100-yard radius of the center point of the S-32 Bridge, on County Route 520 (Rumson Road) in the Boroughs of Rumson and Sea Bright, New Jersey. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T01-0286 to read as follows:

§165.T01-0286 Safety Zone; Shrewsbury River, S-32 Bridge, Boroughs of Rumson and Sea Bright, NJ.

(a) *Location.* The following area is a safety zone: All navigable waters of the Shrewsbury River, within a 100-yard radius of the center point of the S-32 Bridge, County Route 520 (Rumson Road) in the boroughs of Rumson and Sea Bright, New Jersey.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard Officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, no person or vessel may enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port (COTP) or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF 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 the COTP's designated representative.

(d) *Enforcement period.* This section is effective from December 1, 2023, through December 31, 2024, but will only be enforced during periods when heavy lift operations at the new bridge are in progress.

Zeita Merchant,
Captain, U.S. Coast Guard,
Captain of the Port New York.

