



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0019]

RIN 1625-AA00

Safety Zone; Loop Parkway Bridge – Long Creek, Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Long Creek in Hempstead, NY around the Loop Parkway Bridge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the Weeks Marine Loop Parkway Submarine Cable Routing and Protection Project. 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 February 24, 2017. For the purposes of enforcement, actual notice will be used from January 25, 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-2017-0019 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 January 5, 2017, Weeks Marine notified the Coast Guard that it will conduct a project involving the installation of new electrical cables across Long Creek in Hempstead, NY under the Loop Parkway Bridge. The project is scheduled to begin on January 25, 2017 and be completed by February 24, 2017. The work will require the installation of two power submarine cables and one control submarine cable for the Loop Parkway Bridge over Long Creek. Several barges will be in place during the temporary rigging and suspension of cables across the channel. The main channel will be trenched for final placement of the cables. Upon final placement, sand bags and stone will be placed to protect the installed cables. The work area is primarily between Pier 6 and Pier 13 on the south side of the Loop Parkway Bridge on Long Creek. The COTP Long Island Sound has determined that the potential hazards associated with the cable crossing project will be a safety concern for anyone within the work area.

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 cable crossing operation 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 submarine cable project starting on January 25, 2017 and continuing through February 24, 2017 will be a safety concern for anyone within the work zone. This rule is needed to protect people and vessels within the safety zone while the submarine cable project is completed.

IV. Discussion of the Rule

This rule establishes a safety zone from 6:00 a.m. on January 25, 2017 through 5:00 p.m. on February 24, 2017. The safety zone will cover all navigable waters of Long Creek in

Hempstead, NY around the Loop Parkway Bridge: beginning at a point in position at 40°36'18" N, 073°34'13" W north of Pier 6 on the Loop Parkway Bridge; then south to a point in position at 40°36'12" N, 073°34'12" W south of Pier 6 on the Loop Parkway Bridge; then east across Long Creek channel to a point in position at 40°36'13" N, 073°34'08" W; then north to a point in position at 40°36'18" N, 073°34'09" W; then west across the Long Creek channel 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 Weeks Marine Loop Parkway Submarine Cable Routing and Protection 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 twenty-four hours 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.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will affect a small designated area of Long Creek during the winter months when vessel traffic is normally low. Moreover, the Coast Guard will notify the public of enforcement of this rule via appropriate means, such as Local Notice to Mariners, Broadcast Notice to Mariners or VHF-FM marine channel 16 to increase public awareness of this safety zone and the procedure to allow persons or vessels to seek permission to enter the zone.

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 January 25, 2017 through February 24, 2017 that would prohibit entry within the work zone during the submarine cable installation project.. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A 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.T01-0019 to read as follows:

§165.T01-0019 Safety Zone; Loop Parkway Bridge; Long Creek, Hempstead, NY.

(a) Location. The following area is a safety zone: All navigable waters of Long Creek in Hempstead, NY around the Loop Parkway Bridge, contained within the following area; beginning at a point in position 40°36'18" N, 073°34'13" W north of Pier 6 on the Loop Parkway Bridge; then south to a point in position at 40°36'12" N, 073°34'12" W south of Pier 6 on the Loop Parkway Bridge; then east across Long Creek channel to a point in position at

40°36'13" N, 073°34'08" W; then north to a point in position at 40°36'18" N, 073°34'09" W; then west across the Long Creek channel 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 January 25, 2017 through 5:00 p.m. on February 24, 2017, but will only be enforced during cable installation operations or other instances which may cause a hazard to navigation, when deemed necessary by the Captain of the Port (COTP), Long Island Sound. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 twenty-four hours in advance to any scheduled period of enforcement or as soon as practicable in response to an emergency. In the event that project work in the main channel is completed prior to the end of the effective date of February 24, 2017, the Coast Guard will suspend the safety zone and notify the public of channel reopening via VHF-FM marine channel 16 for twenty-four hours after reopening.

(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 Weeks Marine for the Loop Parkway Bridge Submarine Cable and Protection 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 LIS command center) or the designated representative on scene via VHF channel 16 to obtain permission to do so. Request to enter or operate in the safety zone must be made twenty-four hours in advance.
- (4) Mariners are requested to proceed with caution after passing arrangements have been made. Mariners are requested to cooperate with the Weeks Marine project work vessels for the safety of all concerned. The Weeks Marine project work vessels will be monitoring VHF channels 13 and 16. Mariners are requested to proceed with extreme caution and operate at their slowest safe speed as to not cause a wake.

(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: January 24, 2017

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

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