



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2018-0376]**

**RIN 1625-AA00**

**Safety Zone; Neches River, Beaumont, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; request for comments.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on navigable waters of the Neches River extending 500-feet on either side of the Kansas City Southern Railroad Bridge that crosses the Neches River in Beaumont, TX. The safety zone is necessary to protect the bridge as well as persons and property on or near the bridge from potential damage from passing vessels until missing and/or damaged fendering systems are repaired or replaced. Entry of certain vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative. We invite your comments on this rule.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through midnight on August 31, 2018. For the purposes of enforcement, actual notice will be used from May1, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must be received before [INSERT DATE 21 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0376 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comment” 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-2018-0376 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, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409-719-5086, email [Scott.K.Whalen@uscg.mil](mailto:Scott.K.Whalen@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Marine Safety Unit Port Arthur
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
KCS	Kansas City Southern Railroad Company
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
VTS	Vessel Traffic Service

**II. Background Information and Regulatory History**

On April 19, 2018, the Coast Guard was notified that the wood fendering systems designed to protect bridge support columns of the Kansas City Southern Railroad Company’s bridge (KSC) from strikes by vessels transiting under the bridge had been damaged or destroyed by Hurricane Harvey. The south bank column protection fenders

are missing and the north bank column protection fenders are severely damaged. KCS indicated that strikes to the support columns could compromise the bridge structure.

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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The fendering systems protecting the bridge from strikes by passing marine traffic are missing or severely damaged and we must establish this safety zone immediately to protect the bridge and those persons that use the bridge. The Coast Guard is providing an opportunity to comment while the rule is in effect and may amend the rule after it becomes effective, if necessary.

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 and contrary to the public interest because immediate action is needed to respond to potential safety hazards posed by and to passing vessel traffic by and to the unprotected bridge columns supporting the KCS Bridge.

### **III. 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 Marine Safety Unit Port Arthur (COTP) has determined that potential

hazards posed by the unprotected bridge columns are a safety concern to the KCS Bridge and to persons and property on or near the bridge. The purpose of this rule is to provide for the safety of the KCS Bridge and persons and property on or near the bridge.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from 1 p.m. on May 1, 2018 through midnight on August 31, 2018 until missing and/or damaged fendering systems are repaired or replaced, whichever occurs first. The safety zone will extend 500-feet on either side of the KCS Bridge that crosses the Neches River in Beaumont, TX in approximate location 30° 04'54.8"N 094°05'29.4"W. The duration of the zone is intended to protect the bridge support columns as well as persons and property on or near the bridge until the bridge fendering is repaired or replaced. Only vessels less than 65 feet in length and not engaged in towing are authorized to enter the zone, unless otherwise permitted by the COTP or a designated representative are permitted to enter the safety zone.

Persons and vessels not permitted to enter the safety zone must request permission from the COTP or a designated representative. They may be contacted through Vessel Traffic Service (VTS) on channels 65A or 13 VHF-FM, or by telephone at (409) 719-5070.

Permission to transit through the bridge will be based on weather, tide and current conditions, vessel size, horsepower, and availability of assist vessels. All persons and vessels permitted to enter this temporary safety zone shall comply with the lawful orders or directions given to them by COTP or a designated representative.

Intentional or unintentional contact with any part of the bridge or associated structure, including fendering systems, support columns, spans or any other portion of the

bridge, is strictly prohibited. Report any contact with the bridge or associated structures immediately to VTS Port Arthur on channels 65A, 13 or 16 VHF-FM or by telephone at (409) 719-5070.

The Coast Guard will inform the public through public of the effective period of this safety zone through VTS Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

## **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 as 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 size, location and duration of the safety zone. This rule will only affect certain vessels transiting the upper reaches of the Neches River in Beaumont, TX. The Coast Guard will issue a VTS Advisory concerning the zone, and the rule allows 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 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 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 Directive 023-01 and Commandant Instruction M16475.1D, 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 a safety zone that will prohibit entry within 500-feet of either side of the KCS Bridge that crosses the Neches River in Beaumont, TX. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. 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.

### **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. The Coast Guard may amend this temporary final rule if we receive comments from the public that

indicate that a change is warranted. 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.

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 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 temporary final rule 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.

### **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. Add § 165.T08-0376 to read as follows:

**§ 165.T08-0376 Safety Zone; Neches River, Beaumont, TX.**

(a) Location. The following area is a safety zone: all navigable waters extending 500-feet on either side of the Kansas City Southern Railroad Bridge that crosses the Neches River in Beaumont, TX in approximate location 30° 04'54.8"N 094°05'29.4"W.

(b) Effective period. This section is effective from 1 p.m. on May 1, 2018 through midnight on August 31, 2018 or until missing and/or damaged fendering systems are repaired or replaced, whichever occurs first.

(c) Regulations. (1) No vessel may enter or remain in the safety zone except:

(i) A vessel less than 65 feet in length and not engaged in towing; or

(ii) A vessel authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative

(2) Persons and vessels not permitted to enter the safety zone must request permission from the COTP or a designated representative. They may be contacted through Vessel Traffic Service (VTS) on channels 65A or 13 VHF-FM, or by telephone at (409) 719-5070.

(3) Permission to transit through the bridge will be based on weather, tide and current conditions, vessel size, horsepower, and availability of assist vessels. All persons and vessels permitted to enter this temporary safety zone shall comply with the lawful orders or directions given to them by COTP or a designated representative.

(4) Intentional or unintentional contact with any part of the bridge or associated

structure, including fendering systems, support columns, spans or any other portion of the bridge, is strictly prohibited. Report any contact with the bridge or associated structures immediately to VTS Port Arthur on channels 65A, 13 or 16 VHF-FM or by telephone at (409) 719-5070.

(d) Informational broadcasts. The Coast Guard will inform the public of the effective period of this safety zone through VTS Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: May 1, 2018.

Jacqueline Twomey,  
Captain, U.S. Coast Guard,  
Captain of the Port Marine Safety Unit Port Arthur.

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