



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1060]

RIN 1625-AA00

Safety Zone; Unionport (Bruckner Expressway) Bridge, Westchester Creek, Bronx, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I-95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery at mile 1.7 over Westchester Creek. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by installation of two temporary vertical lift bridges during the replacement of the existing Unionport (Bruckner Expressway) Bridge at mile 1.7 over Westchester Creek. When enforced, this regulation prohibits entry of vessels or persons into the safety zone unless authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through May 31, 2019. For the purposes of enforcement, actual notice will be used from February 25, 2019 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 <https://www.regulations.gov>, type USCG-2018-1060 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. Craig Lapiejko, Waterways Management, First Coast Guard District; telephone (617) 223-8351, email Craig.D.Lapiejko@uscg.mil. You may also call or email Mr. Jeff Yunker, Waterways Management Division, U.S. Coast Guard Sector New York, telephone (718) 354-4195, e-mail Jeffrey.M.Yunker@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
LNM	Local Notice to Mariners
NPRM	Notice of proposed rulemaking
NYSDOT	New York State Department of Transportation
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Shoreside construction for Unionport Bridge replacement project started on July 17, 2017, and is tentatively scheduled for completion on, or about, July 13, 2021. During this project, removal and replacement of the original structure will take place. To accomplish these tasks, a temporary vertical lift bridge will be installed upstream, and downstream, of the original structure to facilitate construction and maintain shoreside vehicle traffic.

On November 27, 2018, Lane Construction, the contractor selected for the Unionport Bridge construction project, submitted their regulation request to the Waterways Management

Division of U. S. Coast Guard Sector New York. Lane Construction requested a temporary safety zone be established, possibly lasting up to 96 hours, within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I-95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery, at mile 1.7 over Westchester Creek during the float-in, erection, and installation of two temporary vertical lift spans by barge. We anticipate enforcing the safety zone during the heavy lift operations, occurring between approximately February 25, 2019 and February 28, 2019. The safety zone is expected to be enforced for approximately one 96-hour period when vessels are preparing for and conducting the temporary bridge installation operations. The duration of enforcement for the safety zone is intended to protect personnel, vessels, and the marine environment in these waters while the temporary bridge is being installed. During the enforcement period, all vessels and persons must obtain permission from the Captain of the Port New York or a designated representative before entering the safety zone.

The temporary bridge installation operations could take place anytime between February 25, 2019 and May 1, 2019. However, we anticipated the installation operations to begin on February 25, 2019. The Coast Guard is publishing this rule to be effective through May 01, 2019 in case the project is delayed due to unforeseen circumstances.

The Coast Guard will issue a LNM and/or a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) with as much advance notice as possible for any period of waterway closure or as soon as practicable in response to unforeseen circumstances. Upon completion of temporary bridge installation bridges, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners and LNM.

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 good cause exists for not publishing a notice of proposed rulemaking (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 issue a modified bridge permit, publish an NPRM, take public comments, and issue a final rule before the installation of the two temporary vertical lift bridges is set to begin. It would be impracticable and contrary to the public interest to delay promulgating this rule as it is necessary to establish this safety zone before the temporary vertical lift bridge installations begin on, or about, February 25, 2019, to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge replacement project. A delay of the replacement project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, delay the date when the replacement project is expected to be completed, and open the new bridge for normal operations.

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**. 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 construction project.

II. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with floating in of two, temporary vertical lift bridges starting on or about February 25, 2019. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters of Westchester Creek within the safety zone while the bridge replacement project is ongoing.

IV. Discussion of the Rule

This rule establishes a safety zone from February 25, 2019 through May 31, 2019. The safety zone will cover all navigable waters from surface to bottom within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I-95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery at mile 1.7 over Westchester Creek. Chartlets of the area are available in the docket. When enforced, 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 LNM or Broadcast Notice to Mariners via marine Channel 16 (VHF-FM) in advance of any enforcement.

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, 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) The safety zone only impacts a small designated area of Westchester Creek, 2) the safety zone will only be enforced for approximately 96 hours during the float-in, erection, and installation of two temporary vertical lift spans by barge or if there is an emergency or other unforeseen circumstance, 3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP or a designated representative. The Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via LNM or Broadcast Notice to Mariners via marine channel 16 (VHF-FM).

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 lasting up to 96 hours that will prohibit entry within a 500-foot radius of the New York State Department of Transportation

(NYSDOT) I-95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery at mile 1.7 over Westchester Creek. Channel openings may be requested by mariners before, or after, each work day when requested 24-hours in advance by mariners. 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. 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.

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.T01-1060 to read as follows:

§165.T01-1060 Safety Zone, Unionport (Bruckner Expressway) Bridge, Westchester Creek, Bronx, NY.

(a) *Location.* The following area is a safety zone: all waters of Westchester Creek at mile 1.7, from surface to bottom, within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I-95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery.

(b) *Definitions.* As used in this section:

Designated representative means any Coast Guard commissioned, warrant, petty officer, or designated Patrol Commander of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Northern New England (COTP), 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. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessels means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP to enforce this section.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.20 and 165.23 apply.

(2) During periods of enforcement, no person or vessel may enter or remain in the safety zone described in paragraph (a) of this section unless authorized by the the Captain of the Port (COTP) or the COTP's designated representative. However, any vessel that is granted permission by the COTP or the COTP's designated representative must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless

otherwise required by the Navigation Rules.

(3) During periods of enforcement, any vessels transiting must comply with all orders and directions from the COTP or the COTP's designated representative.

(4) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed by the Coast Guard.

(5) The COTP will promulgate a notice of the channel closure or restrictions by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, LNM and/or Broadcast Notice to Mariners.

(d) *Enforcement periods.* (1) This rule will be effective on February 25, 2019, through May 1, 2019, but will only be enforced during the float-in, erection, and installation of two temporary vertical lift spans by barge.

(2) *Notice of suspension of enforcement.* If enforcement is suspended, the COTP will promulgate a notice of the suspension of enforcement by appropriate means. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or LNM. Such

notification will include the approximate date and time enforcement will be suspended as well as the approximate date and time enforcement will resume.

(3) Violations of this regulation may be reported to the COTP at (718) 354-4353 or on VHF-Channel 16.

Dated: July 26, 2019.

J. P. Tama,
Captain, U.S. Coast Guard,
Captain of the Port New York.

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