

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG–2010–0220]

RIN 1625–AA11

Regulated Navigation Area: Niantic Railroad Bridge Construction, Niantic, CT**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary interim rule with request for comments; notice of meeting.

SUMMARY: The United States Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Niantic River Channel under and surrounding the Amtrak Railroad Bridge that crosses Niantic Bay in the Town of Niantic, Connecticut. This temporary interim rule allows the Coast Guard to suspend all vessel traffic within the RNA for construction operations, both planned and unforeseen, that could pose an imminent hazard to vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during the construction of the Niantic Railroad Bridge.

DATES: This rule is effective in the CFR from July 7, 2010, through April 20, 2013, and with actual notice for purposes of enforcement from June 20, 2010, through April 20, 2013. Public comments should be submitted by August 6, 2010, but will be accepted and reviewed by the Coast Guard through April 20, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0220 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the

SUPPLEMENTARY INFORMATION section

below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0220 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0220 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail LT Judson Coleman, Prevention Department, Coast Guard Sector Long Island Sound, telephone 203–468–4596, e-mail Judson.coleman@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

As this interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments. Alternatively, if the bridge construction necessitating the interim rule is completed before April 20, 2013, and we receive no public comments that indicate a substantive need to revise the rule, we may allow it to expire on that date without further regulatory action.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0220), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be

considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG–2010–0220” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG–2010–0220” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting in connection with the public comment period for this interim rule. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. Although they were not held specifically to solicit public comments on this interim rule, and were not announced in the **Federal Register**, the Coast Guard has held or participated in two locally announced public meetings, on March 22 and April 15, 2010, where waterway closures and restrictions were discussed, and we anticipate holding one or more additional informational meetings, with opportunity for public questions or comments, during the bridge construction. We will provide written summaries of any such meetings in the docket.

Regulatory Information

The Coast Guard is issuing this interim rule without prior notice 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 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 notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. The need for waterway closures was not brought to the attention of the Coast Guard until March 11, 2010. This left insufficient time to issue an NPRM and solicit public comments prior to issuing the interim rule, which is necessary to protect the safety of both the construction crew and the waterway users operating in the vicinity of the bridge construction zone. Further, it would be impracticable and contrary to the public interest to delay or cancel this American Recovery and Reinvestment Act (ARRA) construction project, because to do so would delay necessary repairs thus prolonging the time that construction barges and equipment would be in this location. Additionally, the dynamic nature of the construction process and multitude of construction vessels necessitates that all mariners navigate at a safe speed within the RNA in accordance with Rule 6 of

the Inland Navigation Rules, as the barge and construction equipment configuration may change on a daily basis. Further, the Coast Guard finds that issuance of an NPRM followed by a public comment period is unnecessary, because locally announced public maritime stakeholder meetings were held on March 22 and April 15, 2010, with Coast Guard Sector Long Island Sound, Amtrak, First Coast Guard District Bridge Branch, local marinas, town police, and small business owners in attendance. The construction plan was presented by Amtrak, the bridge owner; public comments and concerns were identified and many have been incorporated into this regulation. For the same reasons, 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**.

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this rule is to ensure construction worker and public safety for the duration of the Niantic Railroad Bridge construction from June 20, 2010 through April 20, 2013.

Discussion of Rule

This RNA encompasses the navigable waters of the Federal channel on the Niantic River in Niantic, Connecticut, within the limits defined in the regulation.

During demolition of the existing Niantic Railroad Bridge and construction of its replacement, the Coast Guard may close the RNA to all unauthorized vessel traffic during any circumstance, planned or unforeseen, that poses an imminent threat to waterway users operating in the area. Complete waterway closure will be made with as much advance notice as possible and, when closure is planned, at least ten days in advance.

The Coast Guard has discussed this project at length with Amtrak and their contractor Cianbro/Middlesex to identify if the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are

certain tasks that can only be completed in the channel and will require closing the waterway. Amtrak issued a letter on May 21, 2010 detailing the required channel work phases that will need waterway closures.

There currently planned and proposed channel closure periods are outlined below:

The currently planned closure period will be from June 20 through October 15, 2010, on Sunday and Monday nights from 10 p.m. to 4:30 a.m., with two exceptions: (1) The channel will remain open during the four days on either side of the full moon to accommodate striped bass charters that depart during nighttime hours, and (2) there will be a scheduled opening between 1:30 to 2 a.m., from August 1 to October 15 to accommodate nighttime departures for offshore tuna fishing.

Other proposed closure periods will be from October 16 through December 15, 2010, on Sunday through Thursday nights from 9 p.m. to 5 a.m.; from December 16, 2010 through March 15, 2011 on Sunday through Thursday from 9 a.m. to 5 p.m. and 9 p.m. to 5 a.m.; and from March 16 through May 15, 2011, on Sunday through Wednesday from 10 p.m. to 4:30 a.m.

Closure periods listed above will be made available to Amtrak and their contractor with the understanding that the construction schedule as well as weather and tide conditions may not allow them to use all closures. On a case-by-case basis, depending on the construction schedule, Amtrak may request a waterway closure from June 20 through October 15, 2010 on Wednesday morning from 12:30 a.m. to 4:30 a.m. Amtrak will notify the Coast Guard of planned activities as soon as possible; preferably four weeks in advance of any event. The Coast Guard will notify the maritime community of those Wednesday dates with a waterway closure via Marine Information Broadcasts, Coast Guard Local Notice to Mariners and Marine Safety Information Bulletins. Closure periods similar to those outlined above should be expected throughout the duration of this rule.

Additionally, during the winter of 2011 and into the early spring of 2012 there will be certain tasks (*i.e.* picking and setting of the heel girders and float-in of the new bridge) that will require 12 to 24 hour closures as well as a seven day closure to float-in and install the new bridge. Once these closure periods are identified they will also be published in the **Federal Register** as a notice of enforcement.

In the event of an emergency all construction equipment will be

removed from the channel to allow for emergency vessels to pass (*i.e.*, Fire Rescue Boat, Marine Police Boat, or Environmental Response Boat).

The implementation of this RNA does not negate the fact that the Inland Rules of the Road as found in 33 CFR part 84 must be strictly adhered to. Mariners are strongly urged to monitor VHF channel 13 when transiting the area and to communicate with fellow mariners to facilitate movement and/or passing arrangements within the channel.

Any violation of the RNA described herein is punishable by, among others, civil and criminal penalties, *in rem* liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant mariner credentials.

The Captain of the Port Sector Long Island Sound (COTP) will cause notice of enforcement, suspension of enforcement, or closure of this RNA to be made by all appropriate means to effect the widest distribution among the affected segments of the public. Such means of notification will include, but are not limited to, Notice of Enforcement published in the **Federal Register**, Broadcast Notice to Mariners, and Local Notice to Mariners.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: Vessels are currently scheduled to be excluded from the RNA only at night on Sunday and Monday, not including full moon tide weeks for night fishing or impacting busy weekend boating times, and vessels will be able to operate on all other portions of the Niantic River not covered by the RNA. Marine radio broadcasts informing the public of any closures made by the RNA will be made before, during, and at the conclusion of the RNA closure enforcement periods.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. This rule will affect the following entities some of which may be small entities: Owners or operators of marinas, charter fishing vessels and commercial fishing vessels who intend to transit in those portions of the Niantic River between June 20, 2010 and April 20, 2013.

Although the RNA will apply to the entire width of the river, under and surrounding the Niantic Railroad Bridge, traffic will be allowed to pass through the area with the permission of the COTP. Before the effective period, we will issue maritime advisories widely available to users of the river.”

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call LT Judson Coleman, Prevention Department, Sector Long Island Sound, at 203–468–4596.

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.

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).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

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 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishing of a regulated navigation area and therefore falls within the categorical exclusion noted above. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

ADDRESSES. Any comments received concerning environmental impacts will be considered and changes made to the environmental analysis checklist and categorical exclusion determination as appropriate.

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. 1226, 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.t01-0220 to read as follows:

§ 165.t01-0220 Regulated Navigation Area: Niantic Railroad Bridge Construction, Niantic, Connecticut

(a) *Location.* The following area is a regulated navigation area: All navigable waters of the Federal channel on the Niantic River in Niantic, CT, from surface to bottom, bounded to the north by the Highway 156/Main Street Bridge and to the south beginning at a point on land located at 41°19'26.000" N, 72°10'51.000" W, then running southeast to position 41°19'16.158" N, 72°10'45.519" W (Niantic River Channel Buoy 3 (LLNR 22310)) and 41°19'15.285" N, 72°10'44.867" W (Niantic River Channel Buoy 4 (LLNR 22315)), then running east to a point on land located at 41°19'14.000" N, 72°10'38.000" W.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by the Captain of the Port, Long Island Sound (COTP).

(3) All persons and vessels must comply with the COTP or the COTP's designated on-scene Coast Guard patrol personnel.

(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.

(5) Persons and vessels may request permission to enter the zone during periods of enforcement on VHF-16 or via phone at 203-468-4401.

(6) Rules of the Road (33 CFR part 84, Inland Navigational Rules) remain in effect and must be strictly adhered to at all times.

(c) *Enforcement Period.* (1) This regulated navigation area is enforceable 24 hours a day from June 20, 2010 until April 20, 2013.

(2) The COTP may temporarily suspend enforcement of the RNA. If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(3) The COTP may temporarily suspend all traffic through the RNA for any situation that would pose imminent hazard to life on the navigable waters. In the event of a complete waterway closure, the COTP will make advance notice of the closure by all means available to effect the widest public distribution including, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time of the closure as well as the date and time that normal vessel traffic can resume.

(4) Violations of this regulated navigation area should be reported to the Captain of the Port Sector Long Island Sound, at 203-468-4401 or on VHF-Channel 16. Persons in violation of this regulated navigation area may be subject to civil and/or criminal penalties.

Dated: June 10, 2010.

J.A. Servidio,

Captain, U.S. Coast Guard, Acting, Commander, First Coast Guard District.

[FR Doc. 2010-16263 Filed 7-6-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0427]

RIN 1625-AA08 and AA00

Safety Zones; Marine Events Within the Captain of the Port Sector Long Island Sound Area of Responsibility, June Through October

AGENCY: Coast Guard, DHS.