



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0084]

RIN 1625-AA11

Regulated Navigation Area; Little Bay Bridge Construction,
Little Bay, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of Little Bay in the Piscataqua River under and surrounding the Little Bay and General Sullivan Bridges in order to facilitate construction of the Little Bay Bridge between Newington, NH and Dover, NH. This temporary interim rule is necessary to provide for the safety of life on the navigable waters during bridge construction operations that could pose an imminent hazard to vessels operating in the area. This rule implements certain safety measures, including speed restrictions and the temporary suspension of vessel traffic during construction operations.

DATES: This rule is effective in the CFR from [INSERT DATE OF PUBLICATION] through July 31, 2013, and effective with actual notice for purposes of enforcement from February 28, 2012, through July 31, 2013. Public comments will be accepted and reviewed by the Coast Guard through July 31, 2013.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0084 using any one of the following methods:

(1) Federal e-Rulemaking 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-2012-0084 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0084 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 temporary rule, call or e-mail Ensign Elizabeth V. Morris of the Waterways Management Division, U.S. Coast Guard Sector Northern New England, telephone 207-741-5440, e-mail Elizabeth.V.Morris@uscg.mil; or Lieutenant Junior Grade Isaac Slavitt of the Waterways Management Branch, U.S. Coast Guard First District, telephone 617-223-8385, e-mail Isaac.M.Slavitt@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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0084), 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-2012-0084" 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-2012-0084" 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**.

Regulatory Information

The Coast Guard is issuing this temporary interim rule

without prior Federal Register 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 immediate action is necessary to ensure the safety of the public during construction of the existing Little Bay Bridge. The need for waterway closures was not brought to the attention of the Coast Guard until January 30, 2012 when the New Hampshire Department of Transportation (NHDOT) requested a complete waterway closure for an eight and a half hour period tentatively scheduled for April 10, 2012.

The Coast Guard discussed with NHDOT a number of alternatives to complete waterway closure, including delaying this portion of construction to allow the Coast Guard to publish a notice of proposed rulemaking with respect to this rule, rerouting traffic through an alternate channel, or arranging the construction barges and cranes in a manner that leaves a portion of the main channel navigable. A delay until at least the middle of

May would unnecessarily prolong construction and increase costs to the public. In addition, the construction operations are currently ongoing, and construction barges and cranes are already in place. Delaying bridge repairs to allow for a full notice and comment period while repair equipment is already in place is contrary to the public interest due to increased cost to taxpayers. Furthermore, facilitating a waterway closure to allow bridge repairs before recreational boater traffic escalates in May is in the public's interest because it will reduce the impact of the waterway closure on the public.

For the reasons discussed, delaying the project would be contrary to the public interest. 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 temporary interim rule is to

ensure the safe transit of vessels in the area, and to protect persons, vessels, and the marine environment during construction operations for the duration of the Little Bay Bridge construction.

Discussion of Rule

The construction of the Little Bay Bridge involves large machinery and construction vessel operations on and over the navigable waters of Little Bay in the Piscataqua River. The ongoing operations are hazardous by their nature, and pose risks both to recreational and commercial traffic, as well as to the construction crew. In order to mitigate the inherent risks involved in construction, it is necessary to control vessel movement through the area.

The purpose of this temporary interim rule is to ensure the safe transit of vessels in the area, and to protect persons, vessels, and the marine environment during construction operations for the duration of the Little Bay Bridge construction work through July 31, 2013.

Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, the RNA will limit vessel speed and wake of all vessels operating in the vicinity of the bridge construction zone.

This will be achieved by implementing a five (5) knot speed limit and "NO WAKE" zone in the vicinity of the construction as well as providing a means to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

The Coast Guard may close the regulated area described in this rule to all vessel traffic during any circumstance that poses an imminent threat to waterway users operating in the area. Complete waterway closures will be made with as much advanced notice as possible. At present, we expect at least two days when the area will be completely closed, but those days have not yet been scheduled by the project managers.

The Captain of the Port (COTP) Sector Northern New England will cause notice of enforcement to be made by appropriate means to ensure the widest distribution 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. In addition, the COTP maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can

obtain information concerning enforcement of the regulated navigation area by contacting Coast Guard Sector Northern New England Command Center at (207) 767-0303.

Entry into the regulated area during a closure is prohibited unless specifically authorized by the Sector Northern New England Captain of the Port (COTP). Any violation of this RNA is punishable by 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.

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.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

We expect the economic impact of this rule to be

minimal because this regulated navigation area only requires vessels to reduce speed through 600 yards of Little Bay, therefore causing only a minimal delay to a vessel's transit. In addition, periods when the regulated navigation area will be closed to all traffic are expected to be short in duration, and the Coast Guard will give advance notice of such closures.

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 substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners or operators of marinas, charter fishing vessels, commercial fishing vessels, and recreational vessels who intend to transit in those portions of Little Bay beneath the new Little Bay Bridge

during the effective period. In addition, periods when the regulated navigation area is closed to all traffic are expected to be short in duration, and the Coast Guard expects to give advance notice of such closures.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: it requires vessels to reduce speed through only 600 yards of Little Bay, therefore causing only a minimal delay to a vessel's transit. We will use various appropriate means to inform the public before, during, and at the conclusion of any RNA enforcement period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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.

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 M16475.1D, 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 that 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 establishment of an RNA. 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.T01-0084 to read as follows:

§165.T01-0084 Regulated Navigation Area; Little Bay Bridge Construction, Little Bay, Portsmouth, NH.

(a) Location. The following area is a Regulated Navigation Area (RNA): all navigable waters of Little Bay between Newington, NH and Dover, NH, from surface to

bottom, within a 300 yard radius of position 43°07'05"N,
070°49'33"W.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA. In addition, the following regulations apply:

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

(3) A speed limit of five (5) knots will be in effect within the regulated area. All vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(4) All persons and vessels must comply with all directions given to them by the COTP or his on-scene representative. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel, New Hampshire State Police vessel, New Hampshire Marine Patrol vessel or other designated craft, or may be on shore, and will communicate with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard

Auxiliary may be present to inform vessel operators of this regulation.

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

(6) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR part 84 - Subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) Enforcement Period. (1) This section is enforceable from February 28, 2012 until 11:59 p.m. on July 31, 2013.

(2) The COTP will give notice of enforcement by appropriate means to inform the affected segments of the public, and such notification will include dates and times. Means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(d) Penalties. Failure to comply with this section may result in civil or criminal penalties pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq. Report violations of this regulated navigation area to the COTP Sector Northern New England, at 207-767-0303 or on VHF-Channel 16.

Dated: February 28, 2012

J. B. McPherson
Captain, U.S. Coast Guard
Acting Commander, First Coast Guard District

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