



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0304]

RIN 1625-AA00

Safety Zone; Housatonic River, Milford and Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters of the Housatonic River. This action is necessary to provide for the safety of life on these navigable waters near Milford and Stratford, CT, during a wire replacement project on the Devon Railroad Bridge. Entry of vessels or people into the safety zone is prohibited unless authorized by the Captain of the Port Long Island Sound or a designated representative. The safety zone will only be enforced during wire replacement operations or other instances which may create a hazard to navigation.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through May 15, 2018. For the purposes of enforcement, actual notice will be used from April 5, 2018 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-2018-0304 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 Chief 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	<b>Federal Register</b>
LIS	Long Island Sound
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum 1983

II. Background Information and Regulatory History

On March 19, 2018, Sector Long Island Sound was made aware of an emergency wire replacement project for the Devon Railroad Bridge over the Housatonic River near Stratford and Milford, CT. The Captain of the Port (COTP) Long Island Sound has determined that the potential hazards associated with the wire replacement project could be a safety concern for anyone within the safety zone.

The project runs from April 5, 2018 through May 15, 2018. During this project, CIANBRO Construction work boats will be in place to remove frayed guy wires currently spanning between two high towers above the Devon Railroad Bridge. Once the frayed guy wires are removed, CIANBRO Construction work boats will stretch new replacement guy wires across the navigable channel and will hoist the wires to the top of the high towers via a pull rope attached to a work boat, starting on the west side of the river, then finishing on the east side of the river. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Long Island Sound or a designated representative. The safety zone

will be enforced only when wires, cables, and rigging equipment are stretched across the navigable channel at low elevations during the wire replacement project or when other hazards to navigation arise. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 twenty-four (24) hours in advance to any period of enforcement or as soon as practicable in response to an emergency. If the project is completed prior to May 15, 2018, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners.

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 wire replacement project 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 Long Island Sound has determined that potential hazards associated with the wire replacement project, which runs from April 5, 2018 through May 15, 2018, will be a safety concern for anyone on the navigable waters within 100 yards of the wire replacement project. This rule is needed to protect people, vessels, and the marine environment within the safety zone until the wire replacement project is completed.

### IV. Discussion of the Rule

This rule establishes a safety zone from 6:00 a.m. on April 5, 2018 through 6:00 p.m. on May 15, 2018. The safety zone will cover all navigable waters of the Housatonic River near Milford and Stratford, CT contained within the following area: beginning at a point on land in position at 41°12'14.5" N, 073°06'40.8" W south of the Governor John Davis Lodge Turnpike (I-95) Bridge; then northeast across the Housatonic River to a point on land in position at 41°12'17.7" N, 073°06'29.1" W south of the Governor John Davis Lodge Turnpike (I-95) Bridge; then northwest along the shoreline to a point on land in position at 41°12'25" N, 073°06'31" W; then southwest across the Housatonic River to a point on land in position at 41°12'22" N, 073°06'43" W; then southeast along the shoreline back to point of origin (NAD 83). All positions are approximate.

The duration of the safety zone is intended to ensure the safety of vessels on the navigable waters within this zone before, during, and after each wire and cable suspension operation, or during any instance that necessitates a temporary closure of the Housatonic River at the project site. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Long Island Sound 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 (24) 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 enforcement of the safety zone. The safety zone will impact only a small designated portion on the Housatonic River for 41 days. Although vessels will not be able to transit around this safety zone, this waterway is typically transited by small recreational craft on an infrequent basis prior to Memorial Day Weekend. Additionally, the safety zone will only be enforced when the wire replacement project necessitates closure of the waterway or during an emergency. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone

and any periods of enforcement. Moreover, 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 this 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.

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 would 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 creates a safety zone lasting 41 days. During those 41 days, the safety zone will be enforced only when the wire replacement project necessitates closure of the waterway or during an emergency. 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 will be 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 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; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0304 to read as follows:

#### §165.T01-0304 Safety Zone; Housatonic River, Milford and Stratford, CT.

(a) Location. The following area is a safety zone: All navigable waters of the Housatonic River near Milford and Stratford, CT contained within the following area: beginning at a point on land in position at 41°12'14.5" N, 073°06'40.8" W south of the Governor John Davis Lodge Turnpike (I-95) Bridge; then northeast across the Housatonic River to a point on land in position at 41°12'17.7" N, 073°06'29.1" W south of the Governor John Davis Lodge Turnpike (I-95) Bridge; then northwest along the shoreline to a point on land in position at 41°12'25" N, 073°06'31" W; then southwest across the Housatonic River to a point on land in position at 41°12'22" N, 073°06'43" W; then southeast along the shoreline back to point of origin (NAD 83). All positions are approximate.

(b) Effective and Enforcement period. This rule is effective from 6:00 a.m. on April 5, 2018 to 6:00 p.m. on May 15, 2018. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 twenty-four (24) hours prior to any scheduled period of enforcement or as soon as practicable in response to an emergency.

(c) Definitions. The following definitions apply to this section:

(1) A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Long Island Sound (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.

(2) An “Official patrol vessel” may be 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.

(d) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter or remain in the safety zone described in paragraph (a) of this section unless authorized by the COTP or one of the COTP’s designated representatives.

(2) Any vessel that is granted permission by the COTP or a designated representative must proceed through the area with caution and operate at a speed no faster than necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(3) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or a designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the safety zone shall exit the zone when directed by the COTP or a designated representative.

(4) To seek permission to enter or remain in the safety zone, individuals may reach the COTP or a designated representative via Channel 16 (VHF-FM) or at 203-468-4401 (Sector Long Island Sound command center).

Dated: April 4, 2018.

K. B. Reed,  
Commander, U. S. Coast Guard,  
Acting Captain of the Port Long Island Sound.

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