

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

[CGD01-04-111]

RIN 1625-AA00

Safety Zone; Metro North Railroad Bridge Over the Norwalk River, Norwalk, CT**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters surrounding the Metro North Railroad Bridge over the Norwalk River, Norwalk, Connecticut. This zone is necessary to protect vessels that wish to transit past the bridge from construction equipment and barges, and removal and replacement of the fender system on the bridge's eastern span. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, Connecticut.

DATES: This rule is effective from 3 p.m. e.d.t. on August 6, 2004 until 11:59 p.m. e.d.t. on October 15, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01-04-111 and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468-4429.

SUPPLEMENTARY INFORMATION:**Regulatory History**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Immediate structural repairs are needed on the Norwalk Metro North Railroad Bridge. The repairs to the bridge and its fendering system must be accomplished for the safety of the vessels and persons transiting in the waters of the Norwalk River under the Metro North Railroad Bridge, Norwalk, Connecticut. Under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after **Federal Register** publication. Any delay encountered in this regulation's effective date would be impracticable

and contrary to public interest since immediate action is needed to restrict and control maritime traffic while transiting in the waters of the Norwalk River under the Metro North Railroad Bridge, Norwalk, Connecticut. The fendering system on the eastern span of the Norwalk Metro North Railroad Bridge is seriously dilapidated. This condition of the fendering system was determined during recent emergency fendering work in the western channel due to an allision in April 2004, which destroyed the fendering system. The Coast Guard was only notified of the time frame to conduct these repairs on July 30, 2004 by Connecticut Department of Transportation. The delay inherent in the NPRM process is contrary to the public interest and impracticable, as immediate action is needed to close the waterway to prevent vessels from transiting in the eastern channel during construction, which will completely remove and replace the current fendering system. While the bridge has been determined to be safe for rail traffic, the disrepair of a fender system that is designed to protect bridge piers from direct allision leaves the bridge piers exposed to the possibility of direct damage. In addition, at times during this construction, the bridge will be lacking a fendering system, and there will be exposed pilings of the new fendering system in the waterway.

Background and Purpose

While conducting repairs on the bridge fender system under the western span of the bridge, workers determined that the fendering system under the bridge in the eastern channel is seriously dilapidated and in need of replacement. While the bridge has been determined to be safe for rail traffic, the disrepair of a fender system that is designed to protect bridge piers from direct allision leaves the bridge piers exposed to the possibility of direct damage and thus poses serious potential dangers and hazards if not rectified immediately. Further damage to the bridge piers could impede rail traffic, and put the safety of the bridge and the public utilizing the rail service at risk. In addition, at times during this construction, the bridge will be lacking a fendering system, and there will be exposed pilings of the new fendering system in the waterway.

Currently, contractors are on the western side of the channel completing repairs from an April 2004 allision that destroyed the fendering system in the western channel. When repair work on the western side of the railroad bridge is completed the contractor will swing its equipment to the east side of the

channel and make repairs to the fender system on the eastern side of the railroad bridge.

The Coast Guard is establishing a safety zone in all waters of the Norwalk River in Norwalk, Connecticut, within 100 yards of the Metro North Railroad Bridge. This safety zone is necessary to protect the safety of the bridge, those persons conducting bridge repair operations and the public using the Metro North Railroad, from further allisions with the bridge piers as well as commercial and recreational vessels. It is also necessary to prevent vessels from colliding with exposed steel pilings that are part of the fender system being constructed.

Discussion of Rule

This regulation establishes a temporary safety zone on the waters of the Norwalk River within 100 yards of the Metro North Railroad Bridge, Norwalk, Connecticut. This action is intended to prohibit vessel traffic in a portion of Norwalk River to prevent damage to the Metro North Railroad Bridge that may be caused due to lack of a fender system around bridge piers of the eastern span of the Bridge. The safety zone is in effect from 3 p.m. on August 6, 2004, until 11:59 p.m. on October 15, 2004. Marine traffic may transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation of the rest of the Norwalk River except for the portion proscribed by this rule. In addition, recreational vessels may pass on the west side of the channel and commercial vessels may request permission to transit the area from the Captain of the Port, Long Island Sound. Other entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

Any violation of the safety zone described herein is punishable by, among others, civil and criminal penalties, *in rem* liability against the offending vessel, and license sanctions.

Regulatory Evaluation

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of

DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: the safety zone is only for a temporary period, vessels may transit safely in all areas of the Norwalk River other than the area of the safety zone, recreational vessels may pass on the east side of the channel, and commercial vessels may request permission to transit the area from the Captain of the Port, Long Island Sound.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of the Norwalk River covered by the safety zone for the specified time period. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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).

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 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 affect 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 will not concern 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 will 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the *Federal Register* (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

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 Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction, from further environmental documentation. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

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(g), 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 temporary § 165.T01–111 to read as follows:

§ 165.T01–111 Safety Zone: Metro North Railroad Bridge over the Norwalk River, Norwalk, Connecticut.

(a) *Location.* The following area is a safety zone: All waters of the Norwalk River, Norwalk, Connecticut, within 100 yards of the Metro North Railroad Bridge.

(b) *Effective date.* This section is effective from 3 p.m. EDT on August 6, 2004 until 11:59 p.m. EDT on October 15, 2004.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(d) *Authorizations:* Recreational vessels are authorized to pass under the bridge’s west span. All commercial vessels may pass under the bridge’s west span upon the request and

authorization by the Captain of the Port, Long Island Sound.

(e) *Compliance.* All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. Designated on-scene U.S. Coast Guard representatives include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: August 6, 2004.

Peter J. Boynton,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 04–19280 Filed 8–20–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket No. MARAD–2003–15030]

RIN 2133–AB49

Administrative Waivers of the Coastwise Trade Laws for Eligible Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, or we, our or us) is publishing this final rule to implement the changes of the Maritime Transportation Security Act of 2002. This final rule implements regulations to waive the U.S.-build requirements of the Passenger Vessel Services Act and section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with appropriate endorsement for employment in the coastwise trade as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. This final rule also brings the application procedure into compliance with the Government Paperwork Elimination Act, which requires that by October 21, 2003, the government must provide “the option of electronic maintenance, submission, or disclosure of information when practicable as a substitute for paper.”

DATES: The effective date of this final rule is September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, MAR–830, Room 7201,

400 Seventh St., SW., Washington, DC 20590; telephone: (202) 366–0760.

SUPPLEMENTARY INFORMATION: Public Law 105–383, which authorized the Secretary of Transportation to grant waivers of certain requirements for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade, contained a sunset provision effective September 30, 2002. The Maritime Transportation Security Act of 2002, section 207(c), Public Law 107–295 (the Act), removed the sunset provision and added anti-fraud revocation authority.

Between January 2000 and September 2002, MARAD utilized regulations published at 46 CFR part 388 to accept applications from the public and to provide public notice of the intent to issue waivers to foreign built vessels for use in the coastwise passenger trade (See **Federal Register** notice at 65 FR 6905) (February 11, 2000). However, the regulation also contained the sunset included in the enabling legislation. The application process required a \$300 non-refundable fee, an “adverse affect” assessment on the U.S.-flag shipping and vessel building community, and a requirement that the vessel meet U.S. Coast Guard documentation standards. Waivers approved by MARAD, which set limits on vessel’s geographic use and required that all significant changes be conducted with MARAD’s prior approval, became a permanent part of the vessel’s coastwise endorsement. As required by the original enabling legislation and the implementing regulations, MARAD granted no waivers after September 30, 2002.

The Act signed by President Bush on November 25, 2002, repealed the September 30, 2002, sunset provision contained in section 505 of the Coast Guard Authorization Act of 1998 (Pub. L. 105–383). The Act also substitutes a new section 503, which requires the Secretary to revoke “a certificate or an endorsement issued under section 502, after notice and opportunity for a hearing, if the Secretary determines that the certificate or endorsement was obtained by fraud.” This section changes and supersedes the circumstances under which a waiver can be revoked. This final rule implements these two legislative changes.

This final rule also makes several administrative changes designed to simplify the application process. Under the simplified process, applicants are encouraged to apply online. The application is available on the MARAD Web site at <http://www.marad.dot.gov>