

a four hour notice for bridge openings is required from January 1 through March 31 from 6 p.m. to 6 a.m.

The bridge owner, New Jersey Transit Rail Operations (NJTRO), requested a bridge closure to facilitate structural and mechanical rehabilitation at the NJTRO railroad bridge.

Under this temporary deviation, the NJTRO railroad bridge may remain closed to navigation from January 1, 2008 through March 31, 2008. Vessels that can pass under the bridge without an opening may do so at all times.

A small number of fishing boats are docked upstream from the NJTRO railroad bridge; however, Cheesecake Creek is predominantly a recreational waterway. From January through March, the recreational vessels are in winter storage and the waterway is normally not transited. The Coast Guard met with the mariners to discuss this bridge project and related closure. The mariners agreed with the closure dates since that is the time period the bridge seldom opens and the waterway is normally frozen.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

Dated: November 26, 2007.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. CGD01-07-150]

RIN 1625-AA00

#### **Safety Zone: Wantagh Parkway 3 Bridge over the Sloop Channel, Town of Hempstead, New York**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is extending the effective period of a temporary safety zone previously established on the waters surrounding the Wantagh Parkway Number 3 Bridge across the Sloop Channel in Town of Hempstead, New York. The extended effective period of this zone is necessary to protect vessels transiting in the area from hazards imposed by construction barges and equipment that are being utilized to construct a new bascule bridge over the Sloop Channel. 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 January 4, 2008 until 11:59 p.m. June 30, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01-07-150 and will be available for inspection or copying at Sector 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 D. Miller, Assistant Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468-4596.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

We did not publish 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. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action to restrict and control maritime traffic transiting in the vicinity of the Sloop Channel under the Wantagh Parkway Number 3 Bridge in the Town of Hempstead, Nassau County, Long Island, New York is needed to ensure the safety of vessels transiting the area.

In 2003, the Coast Guard approved bridge construction and issued a permit for bridge construction for the Wantagh Parkway Number 3 Bridge over the Sloop Channel. Contractors began work constructing the two bascule piers for the new bridge in early June 2004. A safety zone was not deemed necessary at the inception of the construction, as this channel is primarily used by smaller recreational vessels, which could maneuver outside of the channel. However, bridge construction equipment that remains under the

Wantagh Parkway Number 3 Bridge poses a potential hazard greater than originally anticipated. A safety zone was deemed necessary and was established on October 9, 2004 through December 31, 2004, the date when construction impacting the navigable channel was estimated to be complete. A second safety zone was implemented on January 1, 2005 and extended until December 31, 2005 due to delays in construction, requiring equipment to be in the channel in a manner that would leave the waterway unsafe to marine traffic. Due to continued significant delays in bridge construction, the safety zone was extended until December 31, 2006. Construction delays continued and the safety zone extended again to December 31, 2007. The contractor for this project continues to experience significant delays in bridge construction. In order to continue construction in a more rapid and safe manner, barges will need to continuously block the channel under the bridge. Accordingly, the New York State Department of Transportation (NYSDOT) has requested that a safety zone be put in place through June 30, 2008. At that time, the construction progress will allow the contractors to remove the equipment from the channel.

As the construction equipment is presently obstructing the navigable channel, immediate action is needed to prevent accidents by limiting vessel movement in the area with the construction equipment. Traffic exists in this area year round and increases significantly in the summer months with the return of recreational traffic.

##### **Background and Purpose**

Currently, there is a fixed bridge over the Wantagh Parkway Number 3 Bridge over the Sloop Channel in the Town of Hempstead, New York. New York Department of Transportation determined that a moveable bridge would benefit the boating community. In 2003, the Coast Guard approved bridge construction and issued a permit for bridge construction for the Wantagh Parkway Number 3 Bridge over the Sloop Channel. Contractors began work constructing the two-basculer piers for the new bridge in early June 2004. The equipment necessary for the construction of the bridge occupies the entire navigable channel. While there are side channels, which can be navigated, the equipment in the channel is extensive and poses a hazard to recreational vessels attempting to transit the waterway via the side channels under the bridge. Construction, requiring equipment in the navigable

channel, was originally scheduled to end on December 31, 2004. Numerous delays in the construction have required construction equipment to continue to occupy the navigable channel and have required three subsequent extensions of the established safety zone through December 31, 2005 and then through December 31, 2006 and most recently through December 31, 2007 when the contractor continued to experience significant delays. Due to continued construction delays, the NYSDOT has requested that a safety zone be in place through June 30, 2008. To ensure the continued safety of the boating community, the Coast Guard is extending the effective period of the safety zone that is currently in place in all waters of the Sloop Channel within 300-yards of the Wantagh Parkway Number 3 Bridge. This safety zone is necessary to protect the safety of the boating community who wish to utilize the Sloop Channel. Vessels may utilize the Goose Neck Channel as an alternative route to using the Sloop Channel, adding minimal additional transit time. Marine traffic may also transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Sloop Channel, except the portion delineated by this rule.

#### Discussion of Rule

This regulation extends the effective period of a temporary safety zone on the waters of the Sloop Channel within 300-yards of the Wantagh Parkway Bridge. This action is intended to prohibit vessel traffic in a portion of the Sloop Channel in the Town of Hempstead, New York to provide for the safety of the boating community due to the hazards posed by significant construction equipment and barges located in the waterway for the construction of a new bascule bridge. The effective period of this safety zone is continued to 11:59 p.m. on June 30, 2008. Marine traffic may continue to transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Sloop Channel, except the portion delineated by this rule. 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 other things, 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 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.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: vessels may transit in all areas of the Sloop Channel other than the area of the safety zone, and may utilize other routes with minimal increased transit time.

#### 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 Sloop Channel in the Town of Hempstead, New York covered by the safety zone. 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.

#### Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 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 D. Miller Chief, Waterways Management Division, Coast Guard Sector Safety Office 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 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 effect 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.

**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**

The Coast Guard 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. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. An final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be 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. 1225 and 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. Amend § 165.T01-132 by revising paragraph (b) to read as follows:

**§ 165.T01-132 Safety Zone: Wantagh Parkway Number 3 Bridge over the Sloop Channel, Town of Hempstead, NY.**

(b) *Effective date:* This rule is effective from 11:59 p.m. on January 22, 2007 until 11:59 p.m. June 30, 2008.

\* \* \* \* \*

Dated: November 20, 2007.

**D.A. Ronan,**

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

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD09-07-127]

RIN 1625-AA11

**Safety Zone, Chicago Harbor, Navy Pier East, Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Navy Pier East Safety Zone in

Chicago Harbor on December 4, 2007. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will restrict vessel traffic from a portion of the Captain of the Port Lake Michigan Zone.

**DATES:** Effective from 8:30 p.m. to 10 p.m. on December 4, 2007.

**FOR FURTHER INFORMATION CONTACT:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7154.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone, Navy Pier East, Chicago Harbor, Chicago, IL, 33 CFR 165.933 for the following event:

(1) *Total Event Resources* on December 4, 2007 from 8:30 p.m. through 10 p.m.

All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.933 Safety Zone, Navy Pier East, Chicago Harbor, Chicago, IL (72 FR 32525 (June 13, 2007)) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners.

The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF-FM.

Dated: November 20, 2007.

**Sean R. Murtagh,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Lake Michigan.*

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