

Dated: August 6, 2010.

**L. Barndt,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0743]

RIN 1625-AA00

#### Safety Zone; Raccoon Creek, Bridgeport, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in specified waters of Raccoon Creek, Bridgeport, NJ. This action is necessary to provide for the safety of life and property on navigable waters while contractors replace steel I-beams. This safety zone is intended to restrict vessel access in order to protect mariners in a portion of Raccoon Creek.

**DATES:** This rule is effective in the CFR on August 26, 2010 through 10 p.m. on August 28, 2010. This rule is effective with actual notice for purposes of enforcement on August 14, 2010. This rule will remain in effect through August 28, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0743 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0743 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 LT Corrina Ott, Chief, Waterways Management Division, Coast Guard; telephone 215-271-4902, e-mail [Corrina.Ott@uscg.mil](mailto:Corrina.Ott@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

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 a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM is impracticable and contrary to the public interest. Delaying the effective date by first publishing an NPRM and holding a comment period would be contrary to the rule's objectives of ensuring safety of life on the navigable waters while these repairs are taking place, as immediate action is needed to protect persons and vessels from the hazards associated with the bridge repair operations.

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**. Any delay in the effective date of this regulation would be contrary to the public interest as immediate action is necessary to protect persons and vessels from the hazards associated with the bridge repair operations.

### Basis and Purpose

This temporary safety zone is necessary to ensure the safety of persons, vessels, and the New Jersey Department of Transportation (NJDOT) workers while the NJDOT conducts significant bridge repairs. The NJDOT plans on replacing steel I-beams used to support the Route 130 Bridge spanning the Raccoon Creek in Bridgeport, NJ. A barge will be used to transport and support construction materials which will be stationed in the Raccoon Creek channel during the pendency of the safety zone.

### Discussion of Rule

This temporary safety zone is for all navigable waters within 400 yards on either side of the Route 130 Bridge, located approximately at 39 48'04" N, 075 21'20" W. This rule is effective from 6 a.m. to 10 p.m. every Saturday from August 14, 2010 through August 28, 2010. This rule is necessary because the NJDOT has identified the need to station a barge below the Route 130 Bridge to replace three 17-foot steel I-beams and to prevent injury or damage to property

from falling debris associated with the repair. This temporary rule will provide for the safety of mariners navigating the Raccoon Creek. This rule is required due to the inherent dangers associated with these types of construction.

During the enforcement period of the safety zone, all persons and vessels will be prohibited from entering, transiting, mooring, or remaining within the zone unless specifically authorized by the Captain of the Port Delaware Bay, or her designated representative.

### 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. Due to the location of the proposed safety zone being in an area not subject to regular flow of vessel traffic, the regulatory impact is expected to be minimal.

### 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 safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for three days over the course of three weeks from 6 a.m. to 10 p.m. every Saturday from August 14, 2010 through August 28, 2010. The local marina being affected has been notified regarding this temporary safety zone. The marina has made arrangements to inform affected boaters of the need to make alternate arrangements during the effective period. Before the effective period, the Coast Guard will issue

maritime advisories widely available to users of the creek allowing mariners to adjust their plans, accordingly. Although the safety zone will apply to the entire width of the waterway, traffic will be allowed to pass through the safety zone with the permission of the Captain of the Port Delaware Bay or her designated representative.

#### 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.

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 an 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 and neither an environmental assessment nor an environmental impact statement is required. This rule involves a limited-in-duration safety zone intended to protect life and property on the navigable waterways of Raccoon Creek. An environmental analysis checklist and a categorical exclusion determination will be made 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0171.1.

■ 2. Add § 165.T05–0743 to read as follows:

#### § 165.T05–0743 Safety Zone; Raccoon Creek, Bridgeport, NJ

(a) *Location.* The safety zone will restrict vessel traffic on all navigable waters within 400 yards on either side of the Route 130 Bridge, Raccoon Creek,

Bridgeport, NJ located at 39 48'04" N, 075 21'20" W.

(b) *Definitions.* (1) "Designative Representative" means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on her behalf. (2) "Official patrol" means any vessel assigned or approved by the Captain of the Port Delaware Bay with a commissioned, warrant, or petty officer on board that is displaying a Coast Guard Ensign as well as any assisting local law enforcement vessels.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, mooring, anchoring, or remaining within this safety zone is prohibited unless authorized by the Captain of the Port Delaware Bay or her representative.

(2) Except for persons or vessels authorized by the Captain of the Port Delaware Bay or her designated representative, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in the regulated area shall: (i) Stop the vessel immediately when directed to do so by any Official Patrol,

(ii) Proceed as directed by any Official Patrol.

(4) The Captain of the Port Delaware Bay can be reached through telephone 215-271-4807.

(5) The Official Patrol enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Effective Period.* This rule is effective in the CFR on August 26, 2010. This rule is effective with actual notice for purposes of enforcement on August 14, 2010. This rule will remain in effect through 10 p.m. on August 28, 2010.

(e) *Enforcement Period.* This rule will be enforced from 6 a.m. to 10 p.m. every Saturday from August 14, 2010 through August 28, 2010.

Dated: August 5, 2010.

**R.T. Gatlin,**

*Captain, U.S. Coast Guard, Acting Captain of the Port Delaware Bay.*

[FR Doc. 2010-21309 Filed 8-25-10; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0502]

RIN 1625-AA00

#### Safety Zones; Swim Events Within the Sector New York Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing five temporary safety zones for swim events occurring on waters of the Hudson River, East River and Long Island Sound. These temporary safety zones are necessary to protect swimmers, spectators and vessels from the hazards associated with the swim events. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zones unless authorized by the Captain of the Port New York or designated representative.

**DATES:** This rule is effective in the CFR on August 26, 2010 through 11:59 p.m. on September 12, 2010. This rule is effective with actual notice for purposes of enforcement beginning at 03:30 a.m. on July 24, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0502 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0526 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 LTJG Eunice James, Coast Guard Sector New York Waterways Management Division; 718-354-4163, e-mail [Eunice.A.James@uscg.mil](mailto:Eunice.A.James@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

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 a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM is impractical as the Coast Guard did not receive notification of the specific location or planned dates for the events in sufficient time to issue an NPRM without delaying this rule making. A delay or cancellation of the events in order to allow for a notice and comment period is contrary to the public interest in having these events occur on schedule. 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**. In addition to the reasons stated above, this rule is intended to ensure the safety of the event participants, spectators and other waterway users; thus any delay in the rule's effective date would be impractical.

##### Basis and Purpose

These temporary safety zones are necessary to ensure the safety of participants, vessels and spectators from hazards associated with the swimming events and the inherent nature of a large number of swimmers, kayaks, and recreation vessels in the water. Swim events have the potential to result in serious injuries or fatalities. These temporary safety zones are intended to restrict vessels entering the area around the participants to reduce the risk while the swimmers are in the water.

##### Discussion of Rule

Several organizations are sponsoring swimming events within the waters of the Sector New York Captain of the Port Zone, including the Hudson River, the East River and Long Island Sound. The swim events consist of a large number of swimmers, and paddlers crossing the navigable channels.

These events pose significant risks to participants, spectators and the boating public because of the large number of swimmers, kayakers, and recreational vessels that are expected in the area of the event. The temporary safety zones are necessary to ensure the safety of participants, spectators and vessels from the hazards associated with the swim events.