

“thirtieth day after issuance of initial FOIA determination \* \* \*” 15 CFR Sec. 410(a)); *Wilbur v. Central Intelligence Agency*, 355 F.3d 675 (DC. Cir. 2004) (The CIA’s FOIA regulations require that any administrative appeal “be received within 45 days of the agency’s initial decision.” 32 CFR Sec. 1900.42.)

### III. Administrative Procedures Act

Because the change involves rules of agency organization, procedure or practice, the Agency is not required to publish it for comment under Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

### IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes merely codify the actual practice under the existing rules.

### V. Small Business Regulatory Enforcement Fairness Act

Because the rule relates to Agency procedure and practice and merely modifies the agency’s existing filing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

### VI. Paperwork Reduction Act

This revision does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

### Lists of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor Management relations.

■ For the reasons set forth above, the NLRB proposes to amend 29 CFR part 102 as follows:

### PART 102—RULES AND REGULATIONS

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended ((29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Section 102.117(c)(2)(v) is revised to read as follows:

**§ 102.117 Freedom of Information Act Regulations: Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) An appeal from an adverse determination made pursuant to paragraph (c)(2)(iii) of this section must be filed within 28 calendar days of the service of the notification of the adverse determination, in whole or in part. If the adverse determination was made in a Regional Office, a Subregional Office, or by the Freedom of Information Officer, Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC. If the adverse determination was made by the Executive Secretary of the Board or the Inspector General, the appeal shall be filed with the Chairman of the Board in Washington, DC. Within 20 working days after receipt of an appeal the General Counsel or the Chairman of the Board, as the case may be, shall make a determination with respect to such appeal and shall notify the person making the request in writing. If the determination is to comply with the request, the record shall be made promptly available to the person making the request upon receipt of payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the General Counsel or the Chairman of the Board may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification. An adverse determination by the General Counsel or the Chairman of the Board, as the case may be, will be the final action of the Agency. If the requester

wishes to seek review by a court of any adverse determination, the requester must first appeal it under this section.

\* \* \* \* \*

Dated: Washington, DC, November 29, 2007.

By Direction of the Board.

**Lester A. Heltzer,**

*Executive Secretary.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[CGD01–07–158]

### Drawbridge Operation Regulations; Cheesecake Creek, Morgan, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the New Jersey Transit Rail Operation (NJTRO) Railroad Bridge across Cheesecake Creek, mile 0.2, at Morgan, New Jersey. Under this temporary deviation, the bridge may remain in the closed position from January 2, 2008 through March 31, 2008. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate scheduled bridge maintenance.

**DATES:** This deviation is effective from January 2, 2008 through March 31, 2008.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

**SUPPLEMENTARY INFORMATION:** The NJTRO railroad bridge has a vertical clearance of 3 feet at mean high water, and 8 feet at mean low water in the closed position. The existing drawbridge operating regulations, listed at 33 CFR 117.709(b), require the bridge to open on signal; except that, at least

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.*

[FR Doc. E7-23568 Filed 12-4-07; 8:45 am]

**BILLING CODE 4910-15-P**

## 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