

Federal Register as of March 8, 1999 (64 FR 8230, February 19, 1999).

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#### **Effective Date**

(k) This amendment becomes effective on July 10, 2002.

Issued in Renton, Washington, on May 23, 2002.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02-13608 Filed 6-4-02; 8:45 am]

BILLING CODE 4910-13-P

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## **DEPARTMENT OF TRANSPORTATION**

### **Coast Guard**

#### **33 CFR Part 165**

**[CGD01-02-031]**

**RIN 2115-AA97**

#### **Safety Zone; Fore River Channel—Weymouth Fore River—Weymouth, MA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Weymouth Fore River in Weymouth, MA, in the main shipping channel, for four six-day periods, for the construction of a temporary bridge. The safety zones temporarily close all waters approximately 200 yards upstream and 100 yards downstream of the Route 3A (Fore River) Bridge. The safety zone prohibits entry into or movement within this area during the effective periods.

**DATES:** This rule is effective from June 10 to August 30, 2002.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Dave Sherry, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223-3030.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

On April 10, 2002, a notice of proposed rulemaking (NPRM) was published for this regulation at 67 FR 17314. The comment period for that

NPRM expired on May 10, 2002. The Coast Guard is now proceeding to implement a final rule taking into account all comments received.

Good cause exists for making this rule effective in less than 30 days after **Federal Register** publication. Delaying this rule's effective date would be unnecessary and contrary to public interest, since the completion of the temporary bridge construction is deemed necessary to avoid a major disruption in landside transportation, which could potentially occur if the temporary bridge is not completed soon and the current Route 3A bridge becomes unsafe for road traffic. In addition, mariners and the surrounding communities have been prepared for this construction work to occur for over two years. The work was previously delayed due to fabrication and contractual problems.

During these delays it was determined by Massachusetts Highway inspectors that the current Route 3A bridge is beyond repair and must be replaced. During the replacement project the temporary bridge will allow road traffic to continue unimpeded through this area. The current Route 3A Bridge has already exceeded its scheduled useable lifespan and construction of the temporary bridge has already been delayed by over one year. Further delay places the ability of transportation to continue over the Fore River at risk, and means the work would most likely have to be rescheduled for the same time period in 2003, since the May–August time period offers the most favorable working conditions on the bridge. Thus, it is in the best interest of all parties that the work be accomplished in the prescribed time periods herein.

#### **Background and Purpose**

The Massachusetts Highway Department is currently involved in a project to erect a temporary bridge adjacent to the existing bridge over the Weymouth Fore River. The temporary bridge was deemed necessary as part of the overall Route 3A refurbishment project. The construction of the temporary bridge is in its final stages, which involves erection of two bridge gantries as well as the roadway sections.

To accomplish this work, it is necessary to position a crane barge in the main shipping channel in the vicinity of the bridges. During the construction periods, the crane barge will obstruct the main shipping channel. Additionally, the work from the crane barge involves lifting large segments of heavy materials, thereby creating a safety hazard to mariners and the public in the vicinity of the crane

barge and the construction operation during these periods. A safety zone is necessary to ensure public safety while the construction work is taking place.

#### **Discussion of Rule**

This regulation establishes a safety zone 200 yards upstream and 100 yards downstream of the Route 3A bridge on all waters within the Weymouth Fore River main shipping channel, which is bounded by 42°14'34" N, 070°58'03" W; 42°14'44" N, 070°57'59" W; 42°14'45" N, 070°58'03" W; and 42°14'35" N, 070°58'05" W, for four six-day construction periods during the effective times of the zone. These safety zones will close all waters within the points above for the construction periods. Although each closure period is for six days, Middlesex will only be authorized to work for a total of four days within each closure. Middlesex previously stated they only need four days within each closure, but the six day closure periods will aid Middlesex in keeping to their overall schedule, by accounting for potentially unworkable time within each safety zone period which may occur due to unfavorable weather conditions. If Middlesex is not working on a particular day within a safety zone period, the Captain of the Port (COTP) will allow entry of vessels into the zone area during that time to aid in further alleviating burdens on the maritime community.

Within the effective period the zone will be enforced during the following closure times: from sunrise Monday June 10, 2002 until sunset on Saturday June 15, 2002, sunrise Monday June 24, 2002 until sunset on Saturday June 29, sunrise Monday July 15, 2002 until sunset on Saturday July 20, 2002, and sunrise Monday July 29, 2002 until sunset on Saturday August 3, 2002. In the event that the contractor is unable to complete the prescribed work during these times due to unforeseen conditions, the zone may be enforced during two planned contingency periods from sunrise Monday August 12, 2002 until sunset Saturday August 17, 2002 and from sunrise Monday August 26, 2002 until noon Friday August 30, 2002. The safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

## Discussion of Comments and Changes Implemented in the Final Rule

The Coast Guard received seven (7) written comments during the comment period for the NPRM. All comments received were considered in the development of this final rule. Changes implemented in the final rule are the result of inter-Coast Guard evaluations of how to better employ and enforce the regulation and comments and recommendations of stakeholders in the COTP Boston zone. These stakeholders include the maritime industry, commercial contractors, the maritime law community, local yacht clubs, and recreational boaters. Changes from the NPRM are specified below and include a shift of the proposed June 24, 2002 contingency closure to a scheduled closure and a shortening of the proposed August 24, 2002 contingency closure to alleviate burdens recreational mariners could potentially encounter due to the proximity of Labor Day weekend.

### I. Use of the Alternate Route

The Coast Guard received comments from local yacht clubs and maritime industry regarding the alternate route identified in the NPRM outside the Federal Channel in the vicinity of the safety zone. Comments emphasized the importance of this alternate route being implemented in the final rule as a means of alleviating burdens on the recreational boating community. Recreational boater representatives stated that 85 percent of the recreational boaters potentially impacted by the safety zone would be able to transit unimpeded around the safety zone through the alternate route. As a result, the Coast Guard has determined it is essential that the alternate route remain available under this final rule.

The NPRM stated that the alternate route would be marked with aids to navigation. Marine industry representatives expressed concerns over use of the aids to navigation while the Federal Channel was open, citing the potential to confuse commercial shipping. As a result, the aids to navigation will be removed each time the Federal Channel is re-opened after a safety zone period ends. The First Coast Guard District aids to navigation branch will supervise all aspects of the alternate channel navigation aids placement. Mariners are advised that the alternate route has the following dimensions: Maximum vertical clearance (channel margin) at high tide is 30 feet; maximum vertical clearance (channel margin) at low tide is 39 feet; maximum water depth at low tide is 14

feet, maximum horizontal clearance between fenders is 75 feet. The availability of this alternate route does not preclude mariners from exercising good judgment when determining if their vessel can safely transit this route.

### II. The Maximum Time Allowed for Work in the Six Day Periods Should Be Four Total Days

Some comments related concerns that Middlesex should only be permitted to work for a total of four out of the six days scheduled for each effective time of the safety zone, since Middlesex has stated they only need four out of the six days to complete each portion of work. Limiting Middlesex to the four days they need will help further alleviate the burden on mariners in the area. We have determined it is beneficial to maintain the six day periods because it will aid Middlesex in keeping to their overall schedule, by accounting for potentially unworkable time within each safety zone period which may occur due to unfavorable weather conditions. If Middlesex is not working on a particular day within a safety zone period due to unforeseen circumstances, the COTP will allow entry of vessels into the zone area during that time to further alleviate burdens on the maritime community.

### III. The Contingency Closure Adjacent to Labor Day Weekend May Significantly Impact Holiday Activities

The Coast Guard received many comments from local yacht clubs and marinas strongly objecting to the contingency closure which would end on August 31 during Labor Day weekend. Despite the presence of the alternate route, recreational mariners still had concerns. To eliminate any possibility of a negative impact on recreational activities over Labor Day weekend, the Coast Guard will shorten the last contingency closure so that it ends at noon on Friday, August 30, 2002. Middlesex has stated that this will still allow enough time to complete any remaining work if needed after the first contingency closure.

### IV. The Massachusetts Water Resource Authority (MWRA) Needs Close Contact With the Coast Guard to Ensure Its Operations Are Not Put in Jeopardy

The Coast Guard received comments from MWRA regarding the potential impacts of this regulation upon their operations. The MWRA runs barges of sewage sludge from Deer Island across Boston Harbor to Quincy, MA through the Route 3A Bridge. It is essential to the operations of the large sewage treatment plant on Deer Island that

these barges continue to make trips to Quincy, MA. MWRA has stated that their operations will be able to continue in conjunction with this regulation, but at the same time have requested the ability to stay in close contact with the Coast Guard should the output of the Deer Island plant drastically increase due to heavy rains or other unforeseen circumstances, thus creating a need to send a barge over to Quincy during one of the scheduled safety zone periods. The Coast Guard will arrange for Middlesex to temporarily stop work to permit MWRA to send a barge through the safety zone to alleviate these strains on the Deer Island plant.

### V. Contingency Closures Need To Be Modified to Better Accommodate the Construction Schedule

We received comments from Middlesex stating that due to unforeseen material fabrication problems, the first proposed contingency closure needs to be modified to a scheduled closure because all the materials to be used in the first closure will not be ready by June 10, 2002. In an effort to ensure the project keeps on schedule, the Coast Guard will convert the first proposed contingency closure date (June 24, 2002) in the NPRM to a scheduled closure for the purposes of the final rule. The Coast Guard understands that marine construction is a highly fluid business and unforeseen circumstances other than poor weather conditions may arise, and these reasons are why the contingency closure dates were proposed. The use of this one contingency date still leaves two contingency dates remaining.

### Regulatory Evaluation

Although this proposed regulation will prevent vessel traffic from transiting a portion of the Weymouth Fore River main shipping channel during the effective periods, the impact will not be "significant" for several reasons. Entities which may experience some impacts include one commercial oil transfer facility that receives large tank vessels, the Massachusetts Water Resources Authority (MWRA), which barges sludge to a facility in Quincy, Massachusetts, and numerous marinas, yacht clubs, and boat yards upstream of the Route 3A bridge. The Massachusetts Highway Department and its contractor, Middlesex Corporation, have met with these stakeholders to attempt to minimize impacts. Both the oil terminal and MWRA are able to, and have agreed to, work their vessel transit schedules around the six-day periods during which the safety zones are in effect.

without significant negative economic impact.

Marinas, yacht clubs, boat yards, and the boating public will not be severely impacted because an alternate water route has been identified and is available for use on the western (Quincy) side of the main channel during the periods which the safety zones are in effect. This alternate route will provide an alternative for the majority of the recreational waterway users to transit outside of the safety zone and under the western (Quincy) side of both the temporary bridge span and the existing Route 3A bridge span during the periods that the safety zones will be in effect. The alternate water route is limited by the following characteristics: maximum vertical clearance (channel margin) at high tide is 30 ft; maximum vertical clearance (channel margin) at low tide is 39 ft; minimum water depth at low tide is 14 ft; maximum horizontal clearance between pier fenders is 75 ft.

Additionally, stakeholders are being provided advanced notice of these safety zones well in advance, through this rulemaking process, enabling them to make alternate arrangements in lieu of transiting the restricted area during the effective periods. Notifications will also be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

For the reasons cited above, this proposed 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 Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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 rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Fore River main shipping channel during the periods which the safety zones are in effect; or marinas, yacht clubs, and boat yards that service these vessels. For reasons outlined in the *Regulatory Evaluation and Discussion of Comments* sections, this impact is not expected to be significant.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Lieutenant Dave Sherry at the address listed under **ADDRESSES**.

#### **Collection of Information**

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **Federalism**

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government’s having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

#### **Taking of Private Property**

This rule would 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**

The Coast Guard 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 pose 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. A rule with tribal implications has 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.

#### **Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.ID, this proposed rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

#### **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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**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 proposes to amend 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(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From June 10 until August 30, 2002, add temporary § 165.T02–031 to read as follows:

**§ 165.T02–031 Safety Zone: Fore River Channel, Weymouth Fore River, Weymouth, MA.**

(a) **Location.** The following area is a safety zone: 200 yards upstream and 100 yards downstream of the Route 3A bridge on all waters within the Weymouth Fore River main shipping channel, which is bounded by 42°14'34" N, 070°58'03" W; 42°14'44" N, 070°57'59" W; 42°14'45" N, 070°58'03" W; and 42°14'35" N, 070°58'05" W.

(b) **Effective Date.** This section is effective from June 10 to August 30, 2002. Within this period the zone will be enforced during the following closure periods: from sunrise Monday June 10, 2002 until sunset on Saturday June 15, 2002, sunrise Monday June 24, 2002 until sunset on Saturday June 29, 2002, sunrise Monday July 15, 2002 until sunset on Saturday July 20, 2002, and sunrise Monday July 29, 2002 until sunset on Saturday August 3, 2002. In the event that the contractor is unable to complete the prescribed work during these times, two contingency closures may be enforced if needed from sunrise Monday August 12, 2002 until sunset Saturday August 17, 2002, and from sunrise Monday August 26, 2002 until noon on Friday August 30, 2002. If the Captain of the Port (COTP) determines that a safety zone in effect cannot be used due to unforeseen conditions (prompting the need to use a contingency closure), the COTP will discontinue the safety zone for that period and issue a broadcast notice to mariners (BNTM) so informing the public.

(c) **Regulations.** (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston. Requests to enter the safety zone can be made by calling Marine Safety

Office Boston at (617) 223–3000. (2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: May 29, 2002.

**M.E. Landry,**  
*Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.*  
[FR Doc. 02–14055 Filed 6–4–02; 8:45 am]  
**BILLING CODE 4910–15–U**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

**[COTP San Juan–02–049]**

**RIN 2115-AA97**

**Safety Zone; Swimming Across San Juan Harbor, San Juan, Puerto Rico**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary fixed safety zone for the Swimming Across San Juan Harbor event in San Juan Harbor, San Juan, Puerto Rico. This safety zone is necessary to protect swimmers and provide for the safety of life on navigable waters by excluding vessels from transiting in the swimming area.

**DATES:** This rule is effective from 9 a.m. on Sunday July 21, 2002 until 12 (noon) on Sunday July 21, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP San Juan, Puerto Rico 02–049] and are available for inspection or copying at Marine Safety Office San Juan, #5 La Puntilla Final, Old San Juan, PR 00901–1800 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Reyes, Greater Antilles Section, at (787) 729–5381.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

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 a NPRM. Publishing a NPRM, which would incorporate a

comment period before a final rule could be issued, would be contrary to the public interest since immediate action is needed to protect the public and waterways of the United States.

**Background and Purpose**

This rule is required to provide for the safety of life on navigable waters because numerous swimmers will be crossing navigable channels in the commercial port of San Juan. This rule creates a safety zone area that will prohibit non-participating vessels from entering the safety zone during the event without the authorization of the Captain of the Port of San Juan, Puerto Rico. The safety zone area is a rectangular shape starting at point 1, La Puntilla Final, Coast Guard Base at position 18°27'33" N, 066°07'00" W, then South to point 2, Catano Ferry Pier at position 18°26'36" N, 066°07'00" W, then East to point 3, Punta Catano at position 18°26'40" N, 066°06'48" W, then North to point 4 at position 18°27'40" N, 066°06'49" W and back west to the origin, point 1.

Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 or telephone number (787) 729–2040. The United States Coast Guard Communications Center will notify the public via Broadcast Notice to Mariners VHF Marine Band Radio, Channel 22 when the zone is activated.

**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 Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this safety zone to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because entry into the safety zone is prohibited for a limited time and vessels may be allowed to enter the safety zone with the express permission of the Captain of the Port of San Juan or his designated representative.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities.