

### Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

### Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

### Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

### Executive Order 13132, "Federalism"

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

The National Security Agency/Central Security Services (NSA/CSS) is adding an exemption rule for the system of records GNSA 20, entitled 'NSA Police Operational Files'. The proposed rule was published on August 9, 2004, at 69 FR 48183. No comments were received; therefore, the National Security Agency/Central Security Services is adopting the rule as published below.

### List of Subjects in 32 CFR Part 322

Privacy.

### PART 32—[AMENDED]

■ 1. The authority citation for 32 CFR part 322 continues to read as follows:

**Authority:** Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Amend § 322.7, by adding a new paragraph (q) as follows:

### § 322.7 Exempt systems of records.

\* \* \* \* \*

(q) GNSA 20.

(1) *System name:* NSA Police Operational Files.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights

normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: October 20, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD01-04-078]

RIN 1625-AA00

#### Safety Zone; Wantagh Parkway 3 Bridge Over the Sloop Channel, Town of Hempstead, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the waters surrounding the Wantagh Parkway Number 3 Bridge across the Sloop Channel in the Town of Hempstead, New York. This zone is

necessary to protect vessels transiting in the area from hazards imposed by construction barges and equipment. The barges and equipment 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 12:01 a.m. on October 9, 2004, until 11:59 p.m. on December 31, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01-04-078 and will be 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. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Immediate action is needed 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. 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. 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, now remaining under the Wantagh Parkway Number 3 Bridge poses a potential hazard wherein a safety zone is immediately required.

The delay inherent in the NPRM process is contrary to the public interest and impracticable, as immediate action is needed to prevent accident by vessels transiting the area with the construction equipment.

**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. Construction is expected to take until at least December 31, 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.

To ensure the safety of the boating community, the Coast Guard is establishing a safety zone in all waters of the Sloop Channel within 300 yards of the bridge. This safety zone is necessary to protect the safety of the boating community who wish to utilize the Sloop Channel.

**Discussion of Rule**

This regulation establishes 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 located in the waterway for the construction of a new bascule bridge. The safety zone is in effect from 12:01 a.m. on October 8, 2004, until 11:59 p.m. on December 31, 2004. Marine traffic may 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. Vessels may utilize the Goose Neck Channel in order to transit to those areas accessible by Sloop Channel. 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: 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.

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 [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 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. 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.

### 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 considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is 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. From 12:01 a.m. October 9, 2004 to 11:59 p.m. on December 31, 2004 add temporary § 165.T01-078 to read as follows:

#### § 165.T01-078 Safety Zone: Wantagh Parkway Number 3 Bridge over the Sloop Channel, Town of Hempstead, NY.

(a) *Location.* The following area is a safety zone: All waters of the Sloop Channel in Hempstead, NY within 300-yards of the Wantagh Parkway Number 3 Bridge over the Sloop Channel.

(b) *Effective date.* This rule is effective from 12:01 a.m. on October 9, 2004 until 11:59 p.m. on December 31, 2004.

(c) *Regulations.* (1) 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.

(2) All persons and vessels must comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel 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: October 8, 2004.

**Peter J. Boynton,**

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

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 202

[Docket No. RM 2004-3A]

#### Acquisition and Deposit of Unpublished Audio and Audiovisual Transmission Programs

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations of the Copyright Office to extend the Library of Congress' recording of unpublished transmission programs that have been fixed in a tangible medium of expression, which currently involves the recording of unpublished television programs, to include the recording of unpublished radio and other audio and audiovisual transmission programs.

**EFFECTIVE DATE:** November 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** David Carson, General Counsel, or Charlotte Douglass, Principal Legal Advisor, Office of the Copyright General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400. Telephone: (202) 707-8380; Fax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** On August 5, 2004, the Copyright Office published a notice of proposed rulemaking seeking comment on a proposed amendment to its regulation codified at 37 CFR 202.22. Section 407(e)(1) of the Copyright Act provides that the Librarian of Congress may record unpublished transmission programs that have been fixed and transmitted to the public in accordance with regulations established by the Register of Copyrights. Up until now, those regulations have provided for the fixation only of unpublished television transmission programs. However, the Library now wishes to record other audio and audiovisual transmission programs as authorized by section 407(e)(1), and the proposed amendment would provide for such recording.

Specifically, the amendment would permit the Library of Congress to record fixed and unpublished audio and audiovisual transmission programs. As with the present rule for television, this

regulation would enable the Library to record or demand unpublished radio transmission programs. Based on empirical and survey information, the Copyright Office's presumption is that commercial and noncommercial radio transmission programs are unpublished. In consideration of the significance of these widely disseminated forms of public communication, the regulation would also extend the Library's acquisition authority to cable, satellite and Internet transmission programs.

Copyright owners may use the recordings made or demanded by the Library of Congress under this regulation to satisfy the deposit requirements for registration of copyright claims. 17 U.S.C. 408.

In response to the notice of proposed rulemaking, the Copyright Office received two comments. The California Association of Library Trustees and Commissioners supported the Library's proposed rule, stating that increasing the Library's holdings in this way benefits the archive and research community. The National Association of Broadcasters (NAB) did not oppose the regulation, but asserted that the notice of proposed rulemaking provided no basis for presuming that all radio transmission programs have been fixed. NAB pointed out that the Library's existing practice with respect to television programs is to provide notice to commercial television stations of its intention to record specific programs, or that it has recorded such programs, at which point the station may confirm or dispute the Library's belief with respect to the fixed or unpublished status of the program. Moreover, NAB asserted that in order meaningfully to exercise the time limited option of using the Library's recording as a deposit when registering claims to copyright, its members need to receive notice of the particular programs that the Library has recorded.

In response to both of NAB's concerns, the final rule announced herein includes a new provision requiring the Library to maintain on its Web site, at <http://www.loc.gov/rr/record>, for audio recordings, or <http://www.loc.gov/rr/mopic>, for audiovisual recordings, a list of the transmission programs that it has recorded under this authority. A radio, cable, satellite, or Internet transmission program that has been recorded by the Library shall be included on the list within fourteen days of the recording by the Library.<sup>1</sup>

<sup>1</sup> Because of the administrative burden, the Library cannot undertake to send separate notifications to each transmitting organization whenever the Library has recorded a radio transmission program.

Making this information publicly available on the Web site gives the copyright owner the opportunity to challenge the Library's presumption that a particular transmission program had been fixed and unpublished, and it also gives the copyright owner notice that a recording has been made by the Library that the owner may use as a deposit in connection with registration of a copyright claim in the transmission program.

#### List of Subjects

Copyright, Sound recordings.

#### Final Regulation

■ In consideration of the foregoing, the Copyright Office amends part 202 of 37 CFR to read as follows:

#### PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 702, 407 and 408.

■ 2. Section 202.22 is amended as follows:

- a. by revising the section heading;
- b. by revising paragraph (a);
- c. by revising paragraph (b)(1);
- d. in paragraph (b)(2), by removing "by Pub. L. 94-553";
- e. by revising the heading of paragraph (c);
- f. by revising paragraph (c)(1);
- g. in paragraph (c)(2), by removing "copied off-the-air" and adding "recorded" in its place;
- h. in paragraph (c)(3), by removing "copy off-the-air" and adding "record" in its place, by removing "television", and by removing "copying" and adding "recording" in its place;
- i. by revising paragraph (c)(4);
- j. in paragraph (c)(5) introductory text, by removing "off-the-air copying" and adding "recording" in its place;
- k. in paragraph (c)(5)(iii), by removing "with notice of copyright";
- l. in paragraph (c)(6) introductory text, by removing "off-the-air" and by adding "or phonorecord" after "copy";
- m. in paragraph (c)(7), by adding "or phonorecord" after "copy";
- n. by revising (c)(8) introductory text;
- o. in the heading for paragraph (d), by removing "television";
- p. in paragraph (d)(1), by adding "or phonorecord" after "copy";
- q. in paragraph (d)(3)(ii), by adding "or phonorecord" after "copy" each place it appears;
- r. in paragraph (d)(3)(iv), by removing "copies" and adding "of the copies or phonorecords" after "use";
- s. in paragraph (d)(3)(v), by removing "(a) and (c)";