

The drawspan shall resume normal operation at the conclusion of the essential repair work. Mariners should contact the Zuckerman Brothers Drawbridge, via VHF-FM Ch. 9, or by telephone at (209) 464-1253, in advance to determine conditions at the bridge.

The drawspan will be unable to open during the repair. Vessels that can safely pass through the closed drawbridge may continue to do so at any time. An alternative route is available for vessels that can safely navigate around McDonald Island, via Columbia Cut. In accordance with 33 CFR 117.35(c), this work will be performed with all due speed to return the drawbridge to normal operation as soon as possible.

This deviation from the operating regulations is approved under the provisions of 33 CFR 117.35.

Dated: June 9, 2004.

**Kevin J. Eldridge,**

*Rear Admiral, U. S. Coast Guard,  
Commander, Eleventh Coast Guard District.*

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**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01-04-019]

RIN 1625-AA09

#### Drawbridge Operation Regulations: Harlem River, Newtown Creek, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has changed the drawbridge operation regulations that govern the Willis Avenue Bridge, mile 1.5, the Third Avenue Bridge, mile 1.9, the Madison Avenue Bridge, mile 2.3, all across the Harlem River and the Pulaski Bridge, mile 0.6, across Newtown Creek. This final rule allows the bridge owner to keep the above bridges closed for various extended periods of time on the first Sunday in both May and November in order to facilitate the running of the Five Borough Bike Tour and the New York City Marathon, respectively.

**DATES:** This rule is effective July 22, 2004.

**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 docket (CGD01-04-019) and are available for inspection or copying at

the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Kassof, Bridge Administrator, First Coast Guard District, (212)668-7165.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On April 6, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Harlem River, Newtown Creek, New York, in the **Federal Register** (69 FR 18004). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

##### Background and Purpose

The Willis Avenue Bridge, mile 1.5, across the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 30 feet at mean low water (MLW) in the closed position.

The Madison Avenue Bridge, at mile 2.3, across the Harlem River has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position.

The Third Avenue Bridge, at mile 1.9, across the Harlem River has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Pulaski Bridge across Newtown Creek, mile 0.6, has a vertical clearance of 39 feet at MHW and 43 feet at MLW in the closed position. The current operating regulations for the Pulaski Bridge listed at 117.801(g) require it to open on signal if at least a two-hour advance notice is given.

The current operating regulations for the Willis Avenue, Third Avenue, and Madison Avenue bridges, require the bridges to open on signal from 10 a.m. to 5 p.m., if at least four-hours notice is given.

The owner of the bridges, New York City Department of Transportation requested a change to the operating regulations for the Willis Avenue Bridge, the Third Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to facilitate the running of the Five Borough Bike Tour and the New York City Marathon on the first Sunday in both May and November, respectively. They requested the bridges be closed for various extended periods of time between the hours of 8 a.m. and 5 p.m.

Traditionally, these bridge closures were accomplished each year by publishing a temporary final rule in the

**Federal Register** with the bridge closures occurring at various times ranging from 8 a.m. through 5 p.m. The closure times were established to coincide with the race route through the city.

This final rule makes the traditional closures part of the permanent drawbridge operation regulations. New York City Department of Transportation will provide the exact dates and times for each bridge several weeks in advance of the race. Those dates and times will be published in the Local Notice to Mariners.

The Coast Guard believes this rule is reasonable because it would simplify the traditional bridge closure process. Additionally, the bridge closures are on Sundays when the bridges normally receive no requests to open.

##### Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

##### 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).

This conclusion is based on the fact that the bridge closures are of short duration on a Sunday in May and November when the bridges normally do not receive any requests to open.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we 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 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 conclusion is based on the fact that the bridge closures are of short duration on a Sunday in May and

November when the bridges normally do not receive any requests to open.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could 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).

#### 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 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 an 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 does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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 final 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 (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Amend § 117.789 by revising paragraph (c) to read as follows:

#### § 117.789 Harlem River.

\* \* \* \* \*

(c)(1) The draws of the bridges at 103 Street, mile 0.0, Willis Avenue, mile 1.5, Third Avenue, mile 1.9, Madison Avenue, mile 2.3, 145 Street, mile 2.8, Macombs Dam, mile 3.2, 207 Street, mile 6.0, and the two Broadway Bridges, mile 6.8, shall open on signal from 10 a.m. to 5 p.m. if at least four hours notice is given to the New York City Highway Radio (Hotline) Room.

(2) The Willis Avenue Bridge, mile 1.5, the Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, need not open for vessel traffic at various times between 8 a.m. and 5 p.m. on the first Sunday in May and November. The exact time and date of each bridge closure will be published in the Local Notice to Mariners several weeks prior to the first Sunday of both May and November.

\* \* \* \* \*

■ 3. Amend § 117.801 by revising paragraph (g) to read as follows:

**§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.**

\* \* \* \* \*

(g)(1) The draw of the of the Pulaski Bridge, mile 0.6, and the Greenpoint Avenue Bridge, mile 1.3, shall open on signal if at least a two hour advance notice is given to the New York City Department of Transportation Radio (Hotline) Room.

(2) The Pulaski Bridge, mile 0.6, need not open for vessel traffic at various times between 8 a.m. and 5 p.m. on the first Sunday in both May and November. The exact time and date of the bridge closure will be published in the Local Notice to Mariners several weeks prior to the first Sunday of both May and November.

Dated: June 10, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD09-04-032]

RIN 1625-AA00

**Safety Zone; Bear Creek Harbor, Ontario, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Lake Ontario within a 200-yard radius of the fireworks display at Bear Creek Harbor. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of Lake Ontario, Calumet Island, Clayton, New York.

**DATES:** This rule is effective from 9:30 p.m. (local) until 11:30 p.m. (local) on July 3, 2004.

**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 docket [CGD09-04-032] and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd,

Buffalo, New York 14203, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Craig A. Wyatt, U.S. Coast Guard Marine Safety Office Buffalo, at (716) 843-9570.

**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) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

**Background and Purpose**

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of Lake Ontario within a 200-yard radius of the fireworks display at Bear Creek Harbor located in position 43° 16' 39" N, 077° 16' 35" W. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard

Captain of the Port or his designated on-scene patrol representative. The designated on-scene patrol representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

**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).

This determination is based on the minimal time that vessels will be restricted from the zone.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant 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 would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this portion of Bear Creek Harbor from 9:30 p.m. until 11:30 p.m. on July 3, 2004.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 8 p.m. (local) until 10 p.m. (local) on the day of the event.

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.