

representations beginning August 4, 2003.

**II. Administrative Procedure Act**

The amendments published in this notice involve routine, technical and minor, or conforming changes to the Rule's labeling requirements. These technical amendments merely provide a routine change to the cost information in the Rule. Accordingly, the Commission finds for good cause that public comment and a 30-day effective date for these technical, procedural amendments are impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

**III. Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603-604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the cost information in the

Rule. Thus, the amendments will not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

**IV. Paperwork Reduction Act**

In a 1988 notice (53 FR 22113), the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.<sup>11</sup> The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget ("OMB") and assigned OMB Control No. 3084-0068. OMB has extended its approval for its recordkeeping and reporting requirements until September

30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

**List of Subjects in 16 CFR Part 305**

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

**PART 305—[AMENDED]**

■ Accordingly, 16 CFR Part 305 is amended as follows:

■ 1. The authority citation for Part 305 continues to read:

**Authority:** 42 U.S.C. 6294.

■ 2. Section 305.9(a) is revised to read as follows:

**§ 305.9 Representative average unit energy costs.**

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COST OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2003)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu <sup>1</sup>
Electricity .....	8.41¢/kWh <sup>2,3</sup> .....	\$0.0841/kWh .....	\$24.65
Natural Gas .....	81.6¢/therm <sup>4</sup> or \$8.37/MCF <sup>5</sup> ..	\$0.00000816/Btu .....	\$8.16
No. 2 heating oil .....	\$1.22/gallon <sup>7</sup> .....	\$0.00000880/Btu .....	\$8.80
Propane .....	\$1.21/gallon <sup>8</sup> .....	\$0.00001325/Btu .....	\$13.25
Kerosene .....	\$1.43/gallon <sup>9</sup> .....	\$0.00001059/Btu .....	\$10.59

<sup>1</sup> Btu stands for British thermal unit.

<sup>2</sup> kWh stands for kiloWatt hour.

<sup>3</sup> 1 kWh=3,412 Btu.

<sup>4</sup> 1 therm=100,000 Btu. Natural gas prices include taxes.

<sup>5</sup> MCF stands for 1,000 cubic feet.

<sup>6</sup> For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,027 Btu.

<sup>7</sup> For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.

<sup>8</sup> For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.

<sup>9</sup> For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

\* \* \* \* \*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03-11008 Filed 5-2-03; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9056]

RIN 1545-BA82

**Earnings Calculation for Returned or Recharacterized IRA Contributions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that provide a new method to be used for calculating the net income

attributable to IRA contributions that are distributed as a returned contribution pursuant to section 408(d)(4) of the Internal Revenue Code (Code) or recharacterized pursuant to section 408A(d)(6). These regulations will affect IRA owners and IRA trustees, custodians and issuers.

**DATES:** *Effective Date:* These final regulations are effective on May 5, 2003.

*Applicability Date:* These final regulations are applicable for calculating income allocable to IRA contributions made on or after January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Cathy Vohs at 622-6090.

**SUPPLEMENTARY INFORMATION:**

<sup>11</sup> 44 U.S.C. 3501-3520.

## Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under Code sections 408 and 408A. These regulations provide a new method for calculating the net income attributable to IRA contributions that are distributed as a returned contribution pursuant to section 408(d)(4) or recharacterized pursuant to section 408A(d)(6).

Section 408(d)(4) provides that an IRA contribution will not be included in the IRA owner's gross income when distributed as a returned contribution if: (1) It is received by the IRA owner on or before the day prescribed by law (including extensions) for filing the owner's Federal income tax return for the year of the contribution; (2) no deduction is allowed with respect to the contribution; and (3) the distribution is accompanied by the amount of net income attributable to the contribution.

Section 408A(d)(6) provides that a contribution made to one type of IRA may be recharacterized as having been made to another type of IRA if: (1) The

recharacterization transfer occurs on or before the date prescribed by law (including extensions) for filing the IRA owner's Federal income tax return for the year for which the contribution was made; (2) no deduction is allowed with respect to the contribution to the transferor IRA; and (3) the transfer is accompanied by any net income allocable to the contribution.

Notice 2000-39 (2000-2 C.B. 132), provided a new method for calculating net income that generally based the calculation of the amount of net income attributable to a contribution on the actual earnings and losses of the IRA during the time it held the contribution, and provided that under the new method, net income could be negative. Notice 2000-39 provided that until further guidance is issued, either the old method (*i.e.*, the method specified in § 1.408-4(c)(2)(ii)) or the new method may be used to calculate net income.

Proposed regulations under sections 408 and 408A were published in the **Federal Register** on July 23, 2002 (REG-124256-02, 67 FR 48067). These

proposed regulations incorporated, with certain modifications, the new method provided in Notice 2000-39. The public reaction to Notice 2000-39 was generally favorable and few comments were received on the proposed regulations. Consequently, these final regulations adopt the rules in the proposed regulations without modification.

## Explanation of Provisions

These final regulations retain, without change, the methods provided in the proposed regulations. Thus, under these final regulations, for purposes of returned contributions under section 408(d)(4) and recharacterized contributions under section 408A(d)(6), the net income attributable to a contribution is determined by allocating to the contribution a *pro rata* portion of the net income on the assets in the IRA (whether positive or negative) during the period the IRA held the contribution. This new method is represented by the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

Under the final regulations, generally, the adjusted opening balance means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers made to the IRA during the computation period. A special rule is provided for an IRA asset that is not normally valued on a daily basis. In this case, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. One commentator suggested that the application of this special rule be extended to all IRA assets as an alternate fair market value determination so that the value of an IRA at the beginning of the computation period could be the most recent statement value just prior to the contribution, rather than the actual value on the exact date of the contribution.

The final regulations do not extend the special valuation rule to all IRA assets because the IRS and Treasury believe that if an IRA asset is normally valued on a daily basis, these values must be used so that the calculation of the amount of net income attributable to

a contribution is based on the actual earnings and losses of the IRA during the time it held the contribution. The alternate rule suggested by the commentator would increase the chances of producing anomalous results because account activity in the part of the year that precedes the date the contribution was made would be taken into account in the calculation of the net income attributable to the contribution.

One commentator suggested that where both regular Roth IRA contributions and conversion contributions have been made to the same Roth IRA, the net income calculation attributable to a recharacterization of a conversion contribution may require that some of the regular Roth IRA contributions be recharacterized to the traditional IRA. The commentator recommended that if a conversion contribution is being recharacterized, and the Roth IRA contains both regular contributions and conversion contributions, the final rules should permit the principal amount of any regular Roth IRA contributions in that same Roth IRA to remain in the Roth IRA.

The final regulations retain the rule, without modification, that net income calculations and allocations must be based on the overall value of an IRA and

the dollar amounts contributed, distributed or recharacterized to or from the IRA. Even in a recharacterization of an amount converted to a Roth IRA where the Roth IRA contains both regular contributions and conversion contributions, the final regulations do not permit net income, including any losses, to be allocated other than *pro rata*. Thus, the principal amount of regular Roth IRA contributions cannot be protected against adjustment for their *pro rata* share of net income, including any net losses, during the computation period. Once contributions are commingled in an account, those dollars are no longer associated with particular assets or contributions. In the absence of maintaining separate accounts, tying particular assets to a particular contribution would create administrative problems for taxpayers, IRA providers and the IRS.

## Effective Date

These final regulations are applicable for calculating income allocable to IRA contributions made on or after January 1, 2004. For purposes of determining net income applicable to IRA contributions made during 2002 and 2003, taxpayers may continue to apply the rules set forth in Notice 2000-39 or may rely on the proposed regulations.

**Special Analyses**

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because § 1.408–11 and A–2(c) of § 1.408A–5 impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other

personnel from the IRS and Treasury participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
 § 1.408–4 also issued under 26 U.S.C. 408.  
 § 1.408–11 also issued under 26 U.S.C. 408. \* \* \*

■ **Par. 2.** In § 1.408–4, paragraph (c)(1) is amended by adding two sentences before the current first sentence to read as follows:

**§ 1.408–4 Treatment of distributions from individual retirement arrangements.**  
 \* \* \* \* \*

(c) \* \* \* (1) \* \* \* The rules in this paragraph (c) apply for purposes of determining net income attributable to IRA contributions made before January 1, 2004, and returned pursuant to section 408(d)(4). The rules in § 1.408–11 apply for purposes of determining net income attributable to IRA contributions made on or after January 1, 2004, and returned pursuant to section 408(d)(4). \* \* \*

■ **Par. 3.** Section 1.408–11 is added to read as follows:

**§ 1.408–11 Net income calculation for returned or recharacterized IRA contributions.**

(a) *Net income calculation for returned IRA contributions—(1) General rule.* For purposes of returned contributions under section 408(d)(4), the net income attributable to a contribution made to an IRA is determined by allocating to the contribution a *pro rata* portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance.}}$$

(2) *Special rule.* If an IRA is established with a contribution and no other contributions, distributions or transfers are made to or from that IRA, then the subsequent distribution of the entire account balance of the IRA pursuant to section 408(d)(4) will satisfy the requirement of that Internal Revenue Code section that the return of a contribution be accompanied by the amount of net income attributable to the contribution.

(b) *Definitions.* For purposes of this section the following definitions apply:

(1) *Adjusted opening balance.* The term *adjusted opening balance* means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is distributed as a returned contribution pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made to the IRA during the computation period.

(2) *Adjusted closing balance.* The term *adjusted closing balance* means the fair market value of the IRA at the end of the computation period plus the amount of any distributions or transfers

(including recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(3) *Computation period.* The term *computation period* means the period beginning immediately prior to the time that the contribution being returned was made to the IRA and ending immediately prior to the removal of the contribution. If more than one contribution was made as a regular contribution and is being returned from the IRA, the computation period begins immediately prior to the time the first contribution being returned was contributed.

(4) *Regular contribution.* The term *regular contribution* means an IRA contribution made by the IRA owner that is neither a trustee-to-trustee transfer from another IRA nor a rollover from another IRA or retirement plan.

(c) *Additional rules.* (1) When an IRA asset is not normally valued on a daily basis, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day

of the computation period. In addition, solely for purposes of this section, notwithstanding A–3 of § 1.408A–5, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(2) In the case of an IRA that has received more than one regular contribution for a particular taxable year, the last regular contribution made to the IRA for the year is deemed to be the contribution that is distributed as a returned contribution under section 408(d)(4), up to the amount of the contribution identified by the IRA owner as the amount distributed as a returned contribution.

(3) In the case of an individual who owns multiple IRAs, the net income calculation is performed only on the IRA containing the contribution being returned, and that IRA is the IRA that must distribute the contribution.

(d) *Examples.* The following examples illustrate the net income calculation under section 408(d)(4) and this section:

*Example 1.* (i) On May 1, 2004, when her IRA is worth \$4,800, Taxpayer A makes a \$1,600 regular contribution to her IRA. Taxpayer A requests that \$400 of the May 1, 2004, contribution be returned to her

pursuant to section 408(d)(4). Pursuant to this request, on February 1, 2005, when the IRA is worth \$7,600, the IRA trustee distributes to Taxpayer A the \$400 plus attributable net income. During this time, no other contributions have been made to the IRA and no distributions have been made.

(ii) The adjusted opening balance is \$6,400 [\$4,800 + \$1,600] and the adjusted closing balance is \$7,600. Thus, the net income attributable to the \$400 May 1, 2004, contribution is \$75 [ $\$400 \times (\$7,600 - \$6,400) \div \$6,400$ ]. Therefore, the total to be distributed on February 1, 2005, pursuant to § 408(d)(4) is \$475.

*Example 2.* (i) Beginning in January 2004, Taxpayer B contributes \$300 on the 15th of each month to an IRA for 2004, resulting in an excess regular contribution of \$600 for that year. Taxpayer B requests that the \$600 excess regular contribution be returned to her pursuant to section 408(d)(4). Pursuant to this request, on March 1, 2005, when the IRA is worth \$16,000, the IRA trustee distributes

to Taxpayer B the \$600 plus attributable net income. The excess regular contributions to be returned are deemed to be the last two made in 2004: the \$300 December 15 contribution and the \$300 November 15 contribution. On November 15 the IRA was worth \$11,000 immediately prior to the contribution. No distributions or transfers have been made from the IRA and no contributions or transfers, other than the monthly contributions (including \$300 in January and February 2005), have been made.

(ii) As of the beginning of the computation period (November 15), the adjusted opening balance is \$12,200 [ $\$11,000 + \$300 + \$300 + \$300 + \$300$ ] and the adjusted closing balance is \$16,000. Thus, the net income attributable to the excess regular contributions is \$187 [ $\$600 \times (\$16,000 - \$12,200) \div \$12,200$ ]. Therefore, the total to be distributed as returned contributions on March 1, 2005, to correct the excess regular contribution is \$787 [ $\$600 + \$187$ ].

■ **Par. 4.** In § 1.408A-5, A-2(c) is revised to read as follows:

**§ 1.408A-5 Recharacterized contributions.**

\* \* \* \* \*

A-2. \* \* \*

(c)(1) If paragraph (b) of this A-2 does not apply, then, for purposes of determining net income attributable to IRA contributions, the net income attributable to the amount of a contribution is determined by allocating to the contribution a *pro rata* portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

(2) For purposes of this paragraph (c), the following definitions apply:

(i) The term *adjusted opening balance* means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is being recharacterized pursuant to section 408A(d)(6) and any other recharacterizations) made to the IRA during the computation period.

(ii) The term *adjusted closing balance* means the fair market value of the IRA at the end of the computation period plus the amount of any distributions or transfers (including contributions returned pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(iii) The term *computation period* means the period beginning immediately prior to the time the particular contribution being recharacterized is made to the IRA and ending immediately prior to the recharacterizing transfer of the contribution. If a series of regular contributions was made to the IRA, and consecutive contributions in that series are being recharacterized, the computation period begins immediately prior to the time the first of the regular contributions being recharacterized was made.

(3) When an IRA asset is not normally valued on a daily basis, the fair market value of the asset at the beginning of the computation period is deemed to be the

most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. In addition, solely for purposes of this paragraph (c), notwithstanding A-3 of this section, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(4) In the case of an individual with multiple IRAs, the net income calculation is performed only on the IRA containing the particular contribution to be recharacterized, and that IRA is the IRA from which the recharacterizing transfer must be made.

(5) In the case of multiple contributions made to an IRA for a particular year that are eligible for recharacterization, the IRA owner can choose (by date and by dollar amount, not by specific assets acquired with those dollars) which contribution, or portion thereof, is to be recharacterized.

(6) The following examples illustrate the net income calculation under section 408A(d)(6) and this paragraph:

*Example 1.* (i) On March 1, 2004, when her Roth IRA is worth \$80,000, Taxpayer A makes a \$160,000 conversion contribution to the Roth IRA. Subsequently, Taxpayer A discovers that she was ineligible to make a Roth conversion contribution in 2004 and so she requests that the \$160,000 be recharacterized to a traditional IRA pursuant to section 408A(d)(6). Pursuant to this request, on March 1, 2005, when the IRA is worth \$225,000, the Roth IRA trustee transfers to a traditional IRA the \$160,000 plus allocable net income. No other

contributions have been made to the Roth IRA and no distributions have been made.

(ii) The adjusted opening balance is \$240,000 [ $\$80,000 + \$160,000$ ] and the adjusted closing balance is \$225,000. Thus the net income allocable to the \$160,000 is  $-\$10,000$  [ $\$160,000 \times (\$225,000 - \$240,000) \div \$240,000$ ]. Therefore, in order to recharacterize the March 1, 2004, \$160,000 conversion contribution on March 1, 2005, the Roth IRA trustee must transfer from Taxpayer A's Roth IRA to her traditional IRA \$150,000 [ $\$160,000 - \$10,000$ ].

*Example 2.* (i) On April 1, 2004, when her traditional IRA is worth \$100,000, Taxpayer B converts the entire amount, consisting of 100 shares of stock in ABC Corp. and 100 shares of stock in XYZ Corp., by transferring the shares to a Roth IRA. At the time of the conversion, the 100 shares of stock in ABC Corp. are worth \$50,000 and the 100 shares of stock in XYZ Corp. are also worth \$50,000. Taxpayer B decides that she would like to recharacterize the ABC Corp. shares back to a traditional IRA. However, B may choose only by dollar amount the contribution or portion thereof that is to be recharacterized. On the date of transfer, November 1, 2004, the 100 shares of stock in ABC Corp. are worth \$40,000 and the 100 shares of stock in XYZ Corp. are worth \$70,000. No other contributions have been made to the Roth IRA and no distributions have been made.

(ii) If B requests that \$50,000 (which was the value of the ABC Corp. shares at the time of conversion) be recharacterized, the net income allocable to the \$50,000 is \$5,000 [ $\$50,000 \times (\$110,000 - \$100,000) \div \$100,000$ ]. Therefore, in order to recharacterize \$50,000 of the April 1, 2004, conversion contribution on November 1, 2004, the Roth IRA trustee must transfer from Taxpayer B's Roth IRA to a traditional IRA assets with a value of \$55,000 [ $\$50,000 + \$5,000$ ].

(iii) If, on the other hand, B requests that \$40,000 (which was the value of the ABC Corp. shares on November 1) be recharacterized, the net income allocable to the \$40,000 is \$4,000 [ $\$40,000 \times (\$110,000 - \$100,000) \div \$100,000$ ]. Therefore, in order to recharacterize \$40,000 of the April 1, 2004, conversion contribution on November 1, 2004, the Roth IRA trustee must transfer from Taxpayer B's Roth IRA to a traditional IRA assets with a value of \$44,000 [ $\$40,000 + \$4,000$ ].

(iv) Regardless of the amount of the contribution recharacterized, the determination of that amount (or of the net income allocable thereto) is not affected by whether the recharacterization is accomplished by the transfer of shares of ABC Corp. or of shares of XYZ Corp.

(7) This paragraph (c) applies for purposes of determining net income attributable to IRA contributions, made on or after January 1, 2004. For purposes of determining net income attributable to IRA contributions made before January 1, 2004, see paragraph (c) of this A-2 of § 1.408A-5 (as it appeared in the April 1, 2003, edition of 26 CFR part 1).

\* \* \* \* \*

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: April 25, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03-11046 Filed 5-2-03; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01-03-016]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Harlem River, Newtown Creek, NY.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary final rule governing the operation of the Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx; the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx; and the Pulaski Bridge, mile 0.6, across Newtown Creek between Brooklyn and Queens. This temporary final rule authorizes the bridge owner to close the above bridges on May 4, 2003, at different times of short duration to

facilitate the running of the Five Borough Bike Tour. Vessels that can pass under the bridges without a bridge opening may do so at any time.

**DATES:** This rule is effective on May 4, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket (CGD01-03-016) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110-3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668-7165.

#### 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 an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The Coast Guard believes this action is reasonable because the requested closures are of short duration on a Sunday when the bridges normally have no requests to open. The Harlem River and the Newtown Creek are navigated predominantly by commercial vessels that pass under the bridges without bridge openings. The few commercial vessels that do require openings are work barges that do not operate on Sundays. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to close the bridge in order to provide for public safety and the safety of the race participants.

##### Background and Purpose

###### Third Avenue Bridge

The Third Avenue Bridge, at mile 1.9, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing operating regulations are listed at § 117.789 (c).

###### Madison Avenue Bridge

The Madison Avenue Bridge, at mile 2.3, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position. The existing operating regulations listed at § 117.789(c).

###### Pulaski Bridge

The Pulaski Bridge, at mile 0.6, across the Newtown Creek between Brooklyn and Queens, has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water in the closed position. The existing operating regulations listed at § 117.801(g).

The owner of the bridges, New York City Department of Transportation requested a change to the operating regulations for the Third Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to facilitate the running of the Five Borough Bike Tour on Sunday, May 4, 2003.

Under this temporary final rule the Third Avenue Bridge, at mile 1.9, and the Madison Avenue Bridge, at mile 2.3, may remain in the closed position from 8 a.m. to 12 p.m. on Sunday, May 4, 2003. The Pulaski Bridge, at mile 0.6, across Newtown Creek, may remain in the closed position from 9:30 a.m. to 11:30 a.m. on Sunday, May 4, 2003. Vessels that can pass under the bridges without a bridge opening may do so at all times.

##### 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 requested closures are of short duration on a Sunday morning 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 requested closures are of short duration on a Sunday morning when the