

award to the named person a reasonable attorney's fee, not exceeding \$1,000.

### Subpart C—Miscellaneous Provisions

#### § 1981.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether to approve the withdrawal. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 60-day objection period described in § 1981.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 60-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(d)(1) Investigative settlements. At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) Adjudicatory settlements. At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board will constitute

the final order of the Secretary and may be enforced pursuant to § 1981.113.

#### § 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board (Secretary) under § 1981.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

#### § 1981.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

#### § 1981.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires.

[FR Doc. 04-7612 Filed 4-2-04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01-04-018]

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 2, 2004, 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 2, 2004.

ADDRESSES: Documents referred to in this rule 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. The telephone number is (212) 668-7165. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Arca, 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 city only recently made the request to keep these bridges closed and 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 are 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 are 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 2, 2004.

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 2, 2004. 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 2, 2004. 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 bridges normally do not receive any requests to open.

## 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 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 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. 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.

## Environment

We have analyzed this 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 because promulgation of changes to drawbridge regulations have been found to not have a significant effect on 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; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.789, from 8 a.m. through 12 p.m. on May 2, 2004, paragraph (c) is temporarily suspended and a new temporary paragraph (g) is added to read as follows:

#### § 117.789 Harlem River.

\* \* \* \* \*

(g) The draws of the bridges at 103 Street, mile 0.0, Willis Avenue, mile 1.5, 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. The Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, need not open for vessel traffic from 8 a.m. to 12 p.m. on Sunday, May 2, 2004.

■ 3. In section 117.801, from 9:30 a.m. through 11:30 a.m. on May 2, 2004, paragraph (g) is suspended and a new paragraph (h) is added to read as follows:

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

\* \* \* \* \*

(h) The draw of 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. The Pulaski Bridge, mile 0.6, need not open for vessel traffic from 9:30 a.m. to 11:30 a.m. on May 2, 2004.

Dated: March 25, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*  
[FR Doc. 04–7624 Filed 4–4–04; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01–04–022]

#### Drawbridge Operation Regulations: Piscataqua River, ME

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Memorial (US1) Bridge, mile 3.5, across the Piscataqua River between Portsmouth, New Hampshire and Kittery, Maine. Under this temporary deviation, bridge openings for recreational vessels and commercial vessels less than 100 gross tons, will be scheduled at specific times from April 5, 2004 through May 21, 2004. This temporary deviation is necessary to facilitate structural repairs at the bridge.

**DATES:** This deviation is effective from April 5, 2004 through May 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

**SUPPLEMENTARY INFORMATION:** The Memorial (US1) Bridge has a vertical clearance in the closed position of 19 feet at mean high water and 27 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR § 117.531(b).

The bridge owner, New Hampshire Department of transportation (NHDTOT), requested a temporary deviation from the drawbridge operation regulations to facilitate necessary structural maintenance at the bridge.

The bridge must remain in the closed position to allow the construction equipment and personnel to repair the moveable lift span and lift towers. The bridge will open for recreational vessels and commercial vessels less than 100 gross tons from 6 a.m. to 5 p.m., Monday through Friday, at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 5 p.m., respectively. From 5 p.m. through 6 a.m. and on weekends, the draw shall open on signal.

Bridge openings will continue to be provided as soon as possible at all times for commercial vessels greater than 100 gross tons, inbound fishing vessels, and inbound ferry service vessels.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this

deviation was approved because the repairs are vital necessary repairs that must be performed with undue delay in order to assure the continued safe reliable operation of the bridge.

Under this temporary deviation the Memorial (US1) Bridge shall open on signal; except that, from April 5, 2004 through May 21, 2004, Monday through Friday, the draw shall open for recreational vessels and commercial vessels less than 100 gross tons at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 5 p.m., respectively. Commercial vessels greater than 100 gross tons, inbound fishing vessels, and inbound ferry service vessels shall be passed as soon as possible at all times.

This deviation from the operating regulations is authorized under 33 CFR 117.35(b), and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 25, 2004.

**John L. Grenier,**

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

[FR Doc. 04–7622 Filed 4–2–04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

[Docket No. FEMA–P–7634]

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to