

### 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 create 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 does 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.

### 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 rule under Commandant Instruction M16475.ID, 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 (34)(f), of the Instruction, from further environmental documentation.

### List of Subjects in 33 CFR Part 110

Anchorage grounds.

- For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

#### PART 110—ANCHORAGE REGULATIONS

- 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471; 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g). Department of Homeland Security Delegation No. 0170.1.

- 2. Revise § 110.77b to read as follows:

#### § 110.77b Madeline Island, Wisconsin

The waters off of La Pointe Harbor, Madeline Island, Wisconsin, encompassed by the following: starting at 46°46'44.8" N, 090°47'14.0" W; then south southwesterly to 46°46'35.5" N, 090°47'17.0" W; then south southeasterly to 46°46'27" N, 090°47'12.8" W; then east southeasterly to 46°46'22.6" N, 090°46'58.8" W; then following the shoreline back to the starting point (NAD 83).

Dated: June 2, 2004.

**R.J. Papp, Jr.,**

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

[FR Doc. 04–13075 Filed 6–9–04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01–00–228]

RIN 1625–AA09 [Formerly 2115–AE47]

#### Drawbridge Operation Regulations: Mianus River, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Coast Guard is changing the drawbridge operation regulations for the Metro-North Bridge, at mile 1.0, across the Mianus River at Greenwich, Connecticut. This rule will require the bridge to open on signal from 9 p.m. to 5 a.m., after advance notice is given. The bridge presently does not open for vessel traffic between 9 p.m. and 5 a.m., daily. This action will better meet the reasonable needs of navigation.

**DATES:** This rule is effective July 12, 2004. Comments must reach the Coast Guard on or before August 9, 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 (CGD01–00–228) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

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

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

The Coast Guard published at 65 FR 24640 a temporary 90-day deviation and request for comments from the drawbridge operation regulations on April 27, 2000, to provide immediate relief to navigation and to obtain comments from the public concerning this rule. The deviation was in effect from June 7, 2000, through September 4, 2000, during which time, the Metro-North Bridge was required to open on signal, from 9 p.m. to 5 a.m., after a four-hour advance notice was given. No comments were received during the comment period that ended on September 30, 2000.

On January 8, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Mianus River, Connecticut,

in the **Federal Register** (66 FR 1281). In March 2001, we received one comment in response to the notice of proposed rulemaking from Metro-North Railroad, the owner of the Bridge. The bridge owner objected to the additional crewing of the bridge based upon the additional cost that would result and suggested a meeting with the Coast Guard to discuss the proposed changes to the regulations. No public hearing was requested and none was held.

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-00-228), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

#### Background and Purpose

The Metro-North Bridge, mile 1.0, across the Mianus River has a vertical clearance of 20 feet at mean high water and 27 feet at mean low water in the closed position.

The existing operating regulations in 33 CFR 117.209 require the bridge to open on signal from 5 a.m. to 9 p.m., immediately for commercial vessels and as soon as practicable, but no later than 20 minutes after the signal to open is given, for the passage of all other vessel traffic. When a train scheduled to cross the bridge without stopping has passed the Greenwich or Riverside stations and is in motion toward the bridge, the draw must open as soon as the train has crossed the bridge. From 9 p.m. to 5 a.m., the draw need not be opened for the passage of vessels.

The Coast Guard received a request from a commercial vessel operator requesting a change to the operating regulations for the Metro-North Bridge. The commercial operator requested that the bridge open for vessel traffic during the 9 p.m. to 5 a.m. time period when the bridge is normally closed.

The Coast Guard published a temporary 90-day deviation from the drawbridge operation regulations on April 27, 2000, to provide immediate relief to navigation and to obtain comments from the public concerning

this rule. The deviation was in effect from June 7, 2000, through September 4, 2000, during which time, the Metro-North Bridge was required to open on signal, from 9 p.m. to 5 a.m., after a four-hour advance notice was given. No comments were received during the comment period, which ended on September 30, 2000. A late comment letter was received from the commercial mariner that requested the rule change. The mariner indicated that his vessel utilized the additional opening time provided by the test deviation and made about 40 transits after 9 p.m. during the test period. The commercial mariner has added additional vessels which will also require bridge openings after 9 p.m., daily.

The Coast Guard believes that in the case of the Metro-North Bridge, that changing the bridge operating regulations to require openings between 9 p.m. and 5 a.m. with a four-hour notice from April 1 through October 31 and with a twenty four hour notice from November 1 through March 31 is reasonable because it provides for the needs of navigation, as demonstrated by the demand for bridge openings during the test deviation, and has no effect on rail traffic over the bridge.

#### Discussion of Comments and Changes

The Coast Guard received one comment letter from the bridge owner, Metro North, in March 2001 which requested that this rule not be implemented on the basis of the financial burden it will impose on the bridge owner to crew the bridge for requested bridge openings between 9 p.m. and 5 a.m. and that the rule violated the Unfunded Mandates Reform Act ("UMRA") of 1995 (2 U.S.C. 1531-1538).

The mariner that requested this rule change did require bridge openings between 9 p.m. and 5 a.m. as documented by the number of openings recorded during the test deviation. Additionally, the mariner indicated that he added additional vessels to his operating fleet which will also require the bridge to open after 9 p.m. for their passage.

The Coast Guard's policy concerning regulatory changes to the operating hours at bridges requires that bridges shall operate in accordance with the reasonable needs of navigation. We believe that it is a reasonable request to crew the bridge additional hours at night during the summer months to allow commercial tour boats to return to their docks after evening cruises. Additionally, there is no requirement under this interim rule for the bridge owner to crew the bridge after 9 p.m. in

an other than on-call status. The twenty four hour notice during the winter months along with the four-hour notice during the summer months will allow the Bridge Owner sufficient time to respond to requests for opening without maintaining a crew on-site, at all times, between 9 p.m. and 5 a.m. In addition, our policy requires that no regulations shall be drafted solely for the purpose of saving the cost of crewing a bridge or to save wear and tear on the structure. Additionally, this rule does not impose a financial burden upon the Bridge Owner, a non-federal entity, of over \$100 million dollars, the UMRA's economic threshold.

No public hearing was requested and none was held because the bridge owner's request to meet with the Coast Guard would not provide for public comment. The Coast Guard believes no new additional information could be obtained by conducting a public hearing because there is documented evidence that there is a navigational need during the time period this final will require the bridge to be on call.

The Coast Guard believes that this rule will better meet the present needs of navigation; therefore, no changes were made as a result of the comments received.

#### Discussion of Rule

The Coast Guard is revising the operating regulation in 33 CFR 117.209(b) for the Metro-North Bridge by requiring the bridge to open during the 9 p.m. to 5 a.m. time period.

The rule requires the draw to open on signal from April 1 through October 31, from 9 p.m. to 5 a.m., after at least a four-hour advance notice is given and then from November 1 through March 30, from 9 p.m. to 5 a.m., after at least a twenty-four hours advance notice is given.

#### 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 this bridge will only be required to be crewed between 9 p.m. and 5 a.m., and only when a request to open the bridge is given with a four-hour notice and twenty four hour notice is given

from April 1 through October 31 and November 1 and March 31, respectively.

### 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 this bridge will only be required to be crewed between 9 p.m. and 5 a.m., and only when a request to open the bridge is given with a four-hour notice and twenty four hour notice is given from April 1 through October 31 and November 1 and March 31, respectively.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 Assistance

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 proposed 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. Section 117.209(b) is revised to read as follows:

**§ 117.209 Mianus River.**

\* \* \* \* \*

(b) The draw shall open on signal from April 1 through October 31, from 9 p.m. to 5 a.m., after at least a four-hour advance notice is given and from November 1 through March 30, from 9 p.m. to 5 a.m., after at least a twenty-four-hour advance notice is given by calling the number posted at the bridge.

Dated: May 28, 2004.

**Vivien S. Crea,**

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

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**DEPARTMENT OF HOMELAND  
SECURITY**
**Coast Guard**
**33 CFR Part 165**

[CGD09-04-001]

RIN 1625-AA00

**Security Zone; Professional Golfer's  
Association Championship Tour,  
Sheboygan, WI; Lake Michigan**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for a portion of Lake Michigan in Sheboygan, WI during the Professional Golfers' Association (PGA) Championship Event. This action is part of a comprehensive security plan designed to maximize the safety of the numerous high-profile spectators and athletes expected at this event. This action is intended to restrict vessel traffic for a portion of Lake Michigan off of Sheboygan, WI.

**DATES:** This rule is effective from 7 a.m. (local) August 9, 2004, until 8 p.m. (local) August 17, 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 [CGD09-04-001], are available for inspection or copying at MSO Milwaukee between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Mike Schmidtke, MSO Milwaukee, at (414) 747-7155.

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

On March 29, 2004, we published a notice of proposed rulemaking (NPRM)

entitled "Security Zone; Professional Golfer's Association Championship Tour, Sheboygan, WI; Lake Michigan" in the **Federal Register** (69 FR 16186). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

**Background and Purpose**

This security zone is necessary to safeguard the PGA Championship Tour players and attendees from potential waterborne threats and hazards. Due to the intense public interest in, and extensive media coverage of this event, the Captain of the Port (COTP) expects a significantly large number of spectators in confined areas adjacent to Lake Michigan.

The security zone coordinates have changed from what was previously published in the **Federal Register**. These coordinates have changed to increase the safety of the public as well as the Coast Guard vessels patrolling the security zone due to underwater obstructions around and on the previous perimeter of the security zone. The changes made to these coordinates are not significant and still encompass the area as previously discussed. As modified, the COTP is implementing this security zone to ensure the safety and security of both participants and spectators in these areas beginning on August 9, 2004, and concluding on August 17, 2004. Security zone enforcement will occur daily between 7 a.m. and 8 p.m.

**Discussion of Comments and Changes**

We received no comments in response to this rulemaking and no changes, other than those for safety reasons mentioned in the *Background and Purpose* section, were made.

**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 to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. 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 have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit, moor or anchor in a portion of the activated security zone.

This security zone does not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only the 9 days of the event and vessel traffic can safely pass outside of the security zone during the event.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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