

104–4, March 22, 1995, 109 Stat. 48). This rule does not impose any requirements on State, local, or tribal governments, or the private sector and, thus, will not require those entities to expend any funds.

#### **Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA and the FTA have determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA and the FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

#### **Executive Order 12372 (Intergovernmental Review)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

#### **Paperwork Reduction Act**

This action does not create any new information collection requirements for which a Paperwork Reduction Act submission to the Office of Management and Budget would be needed under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

#### **National Environmental Policy Act**

The FHWA and the FTA have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and have determined that this action will not have any effect on the quality of the environment.

#### **Executive Order 13175 (Tribal Consultation)**

The FHWA and FTA have analyzed this action under Executive Order 13175, dated November 6, 2000, and concluded that this rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government; and will not preempt tribal law. There are no requirements set forth in this rule that directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 12988 (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.

#### **Executive Order 13045 (Protection of Children)**

Under Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, this final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This final 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.

#### **Executive Order 13211 (Energy Effects)**

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA and FTA 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 this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 23 CFR Part 774**

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

Issued on: May 27, 2008.

**James D. Ray,**  
*Acting Federal Highway Administrator.*  
**James S. Simpson,**  
*FTA Administrator.*

■ In consideration of the foregoing, 23 CFR part 774 is amended as set forth below.

### **Federal Highway Administration**

#### **Title 23—Highways**

#### **PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(F))**

■ 1. The authority citation for part 774 continues to read as follows:

**Authority:** 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2); 49 U.S.C. 303; Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144); 49 CFR 1.48 and 1.51.

■ 2. Amend § 774.3 by revising paragraph (c) introductory text to read as follows:

#### **§ 774.3 Section 4(f) approvals.**

\* \* \* \* \*

(c) If the analysis in paragraph (a)(1) of this section concludes that there is no feasible and prudent avoidance alternative, then the Administration may approve, from among the remaining alternatives that use Section 4(f) property, only the alternative that:

\* \* \* \* \*

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### **DEPARTMENT OF HOMELAND SECURITY**

#### **Coast Guard**

#### **33 CFR Part 117**

[USCG–2008–0337]

#### **Drawbridge Operation Regulation; Arthur Kill, Staten Island, NY and Elizabeth, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, First Coast Guard District, has issued a new temporary deviation from the regulation governing the operation of the Arthur Kill (AK) Railroad Bridge across Arthur Kill at mile 11.6 between Staten Island, New York and Elizabeth, New Jersey. This deviation is necessary to test a new operating rule for the bridge that will help determine the most equitable and safe solution to facilitate the present and anticipated needs of navigation and rail traffic. This deviation requires the AK Railroad Bridge to remain in the open position but allows the bridge owner/operator to schedule bridge closure periods after consultation with the marine community.

**DATES:** This deviation is effective from 12:01 a.m. on June 1, 2008 through November 21, 2008. Comments must be received by September 19, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0337 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Battery Park Building, One South Street, New York, NY 10004 between 8:30 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Kassof, Bridge Branch, (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The Arthur Kill Railroad Bridge (AK RR) has a vertical clearance of 31 feet at mean high water and 35 feet at mean low water in the closed position. The owner of the bridge, New York City Economic Development Corporation (NYCEDC), began a bridge rehabilitation program approximately 10 years ago, as part of the region's Full Freight Access Initiative. Background about the AK RR and the bridge owner's rehabilitation efforts may be found at 72 FR 12981 (Mar. 20, 2007). The operating rule for this bridge found at 33 CFR 117.747 is no longer applicable or necessary as it pertains to the AK RR because the AK RR has been maintained in the open position for the past 20 years due to the cessation of all railroad train traffic over the bridge.

#### **Initial Test Deviation**

On March 20, 2007, we published a temporary deviation entitled "Drawbridge Operation Regulations; Raritan River, Arthur Kill, and Their Tributaries, NJ" in the *Federal Register* (72 FR 12981). The temporary deviation concerned a test operating schedule for the bridge needed to help determine a bridge operating schedule that would accommodate present and anticipated rail operations while continuing to provide for the present and anticipated needs of navigation. This deviation from the operating regulations was authorized under 33 CFR 117.35.

#### **Revised Deviation**

On June 8, 2007 we published a cancellation of the test deviation which

had begun on April 9, 2007, and published a revised test schedule that was anticipated to better reflect actual rail and marine needs (72 FR 31725). The length of bridge closure periods has consistently been well under 30 minutes thereby minimizing the impact upon the marine community.

#### **Deviation in Place Since November 2007**

Since November 24, 2007, the bridge has operated under a further revised operating schedule which authorized four daily (Monday through Friday) unscheduled bridge closures. This schedule relied exclusively upon coordination of all bridge closures by the Coast Guard (Vessel Traffic Service—New York). This is no longer a function or service that the Coast Guard can sustain.

#### **Temporary Deviation To Be Established**

Therefore, a new bridge operation schedule expected to provide bridge closure opportunities that will meet present and future rail operations while satisfying the needs of navigation will be tested. This new schedule relies upon advance notification of bridge closure periods by the bridge owner or operator and coordination and communication among the various port partners.

Approximately 21 deep draft vessels, 16 coastal tankers, 240 tugs and 200 barges transit the AK RR weekly. Since the bridge remains in the open position except for the passage of trains most vessel passages are through an open lift span. The bridge closes approximately twenty five to thirty times weekly for the passage of trains. Coordination with port partners including pilots, tug and barge operators has been ongoing since the commencement of bridge rehabilitation and continues presently. A variety of factors, such as daily tide variations, the present and anticipated needs of navigation, and train scheduling, will be evaluated during this temporary test deviation.

The schedule considered in this notice would provide daily, unscheduled, bridge closures up to thirty minutes in duration.

This temporary deviation requires the AK RR to remain in the open position at all times except during periods when it is closed for the passage of rail traffic. Conrail, the bridge operator, has established a dedicated hot line at 973-690-2454 for coordination of anticipated bridge closures. Tide restrained, deep draft vessels shall call the hot line daily to advise of expected times of vessel transit through the AK RR. The bridge may not close for the

passage of trains during any high tide period (2 hours before until ½ hour after predicted high tide at The Battery, New York) if deep draft, tide restrained vessels have advised Conrail of their intent to transit under the bridge. At least 90 minutes prior to a bridge closure the bridge owner or operator shall broadcast notice (minimum range of 15 miles) on channel 13/16, VHF-FM of its intent to close the bridge for up to thirty minutes. The Coast Guard shall be informed via call to VTS-NY at 718-354-4088. Each day one bridge closure of up to 45 minutes in duration is authorized to allow multiple train movements across the bridge. Vessels shall plan their transits around the announced closure period(s); however a request for up to a 30 minute delay in the bridge closure to allow navigation to meet tide or current requirements shall be granted if requested within 30 minutes after the initial bridge closure broadcast is made. Requests to delay the bridge closure received after the initial 30 minutes may be granted by the bridge operator. The bridge owner/operator shall repeat the bridge closure notice via marine radio at 15 minute intervals until 15 minutes prior to the intended closure at which time notice of bridge closure will be broadcast every five minutes and once again as bridge begins to close and appropriate sound signal given. In the event of bridge operational failure, the bridge owner or operator shall notify the Coast Guard Captain of the Port, New York immediately and shall ensure that a repair crew is on scene at the bridge no later than 45 minutes after the bridge fails to operate and that repair crew shall remain at the bridge until the bridge has been restored to normal operations or raised and locked in the fully open position.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 21, 2008.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

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