

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 117**

[CGD13-01-001]

RIN 2115-AE47

**Drawbridge Operations Regulations; Lake Washington Ship Canal, Seattle, WA**

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the operating regulations for the Ballard Bridge across the Lake Washington Ship Canal, mile 1.1, at Seattle, Washington. This change limits double-leaf opening of the bascule draw daily with notice requirements. These special operations are to accommodate a major refurbishment project to the operating and drive systems of the bridge by the City of Seattle.

**DATES:** This temporary final rule is effective from 5 a.m. on September 4, 2001, until 8 p.m. on September 30, 2002.

**ADDRESSES:** The public docket and all documents referred to in this document are available for inspection at the Thirteenth Coast Guard District, Aids to Navigation and Waterways Management Branch, 915 Second Avenue, Seattle, Washington 98174-1067, between 7:45 a.m. and 4:15 p.m. Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Project Officer, Thirteenth Coast Guard District, (206) 220-7282.

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

On February 12, 2001, a notice of proposed rulemaking was published in the **Federal Register** entitled Drawbridge Operation Regulations; Lake Washington Ship Canal (66 FR 9779). Two objections to the proposed temporary rule were received. One objection concerned commercial vessels and the other objection pertained to a research vessel. Their concerns have been accommodated in this temporary final rule.

**Background and Purpose**

The City of Seattle proposed to replace the aged operating and drive systems of the bascule drawspan. To minimize interference with navigation, only one leaf will be temporarily disabled at a time. The disabled draw leaf will be powered by a winch system

that will not perform at the usual speed for this drawbridge. In order to avoid lengthy inoperative periods, the bridge owner proposed three daily periods during which the draw will open fully for vessels unable to safely pass through one-half of the span. With five hours notice, both leaves of the draw would open at 5 a.m., 11 a.m., and 7 p.m. on any day of the week. The second and third periods are changed from 12:30 p.m. and 8 p.m. to better accommodate larger vessels. In addition a provision has been added for double-leaf openings at any time for vessels of at least 480 gross tons whenever at least one-week notice is provided. The established closed periods Monday through Friday of 7 a.m. to 9 p.m. and 4 p.m. to 6 p.m., except federal holidays, will remain in effect. The start time for the special operations is changed from June 4 to September 4, 2001. During the project, single-leaf openings are available according to the operating schedule currently in effect. These regulations provide that both draw leaves need not be opened for the passage of vessels, including vessels engaged in towing operations, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays, for any vessel under 1000 gross tons.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that most vessels will be able to pass the bridge with little change from normal operations and that all vessels can be accommodated three times a day. The largest vessels affected will be able to provide the one-week notice whenever the scheduled full openings are not convenient.

**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.

**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 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. Some vessel owners might be temporarily inconvenienced by the change, if effected, but the delay should not be significant, especially after vessel operators learn of the change and can therefore plan their trips on the canal accordingly.

**Collection of Information**

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

**Federalism**

We have analyzed this rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

**Taking of Private Property**

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize

litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 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.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (32)(e) of Commandant Instruction M16475.IC, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

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

Bridges, Regulations.

For the reasons discussed 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; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.1051(d) is amended by temporarily adding paragraph (4) as follows:

**§ 117.1051 Lake Washington Ship Canal.**

\* \* \* \* \*

(d) \* \* \*

(4) From 5 a.m. on September 4, 2001, to 8 p.m. September 30, 2002, the Ballard Bridge, mile 1.1, need not open both draw leaves for the passage of vessels, including those engaged in towing operations, except at 5 a.m., 11 a.m., and 7 p.m. if at least five hours notice is given or at any time for vessels of 480 gross tons or more if at least one-week notice is provided, other than 7 a.m. to 9 p.m. and 4 p.m. to 6 p.m. Monday through Friday, except federal holidays.

\* \* \* \* \*

Dated: June 5, 2001.

**Erroll Brown,**

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

[FR Doc. 01-17107 Filed 7-9-01; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 20**

**RIN 2900-AK74**

**Board of Veterans' Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on the Grounds of Clear and Unmistakable Error**

**AGENCY:** Department of Veterans Affairs.

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

**SUMMARY:** This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) to provide that, when a motion to revise a Board decision on the grounds of clear and unmistakable error (CUE) fails to provide specific allegations of error, the Board will dismiss the motion without prejudice to refile. This amendment is made necessary by a decision of the United States Court of Appeals for the Federal Circuit.

**DATES:** *Effective Date:* This interim final rule is effective July 10, 2001. Comments must be received on or before September 10, 2001.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900-AK74." All comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Acting Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-565-5978).

**SUPPLEMENTARY INFORMATION:** The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's 57

Members decide about 35,000 to 40,000 cases per year.

In 1999, the Department of Veterans Affairs (VA) published rules implementing the provisions of section 1(b) of Pub. L. No. 105-111 (Nov. 21, 1997), which permit challenges to Board decisions on the grounds of "clear and unmistakable error" (CUE). 64 FR 2134 (Jan. 13, 1999). Those regulations were challenged in the U.S. Court of Appeals for the Federal Circuit. On December 8, 2000, that court upheld all of the challenged regulations with the exception of Rule 1404(b) (38 CFR 20.1404(b)). To the extent that Rule 1404(b) provided that a CUE motion which failed to specifically allege error would be denied, rather than dismissed without prejudice to refile, the court stated:

We hold that CUE Rule 1404(b) (codified at 38 CFR 20.1404(b)) is invalid because, in conjunction with the CUE Rule 1409(c) (codified at 38 CFR 20.1409(c)), it operates to prevent Board review of any CUE claim that is the subject of a motion that is denied for failure to comply with the pleading requirements of Rule 1404(b). That is contrary to the requirement of 38 U.S.C. 7111(e) that a CUE claim "shall be decided by the Board on the merits."

*Disabled American Veterans v. Gober*, 234 F.3d 682, 704 (Fed. Cir. 2000). See also *id.* at 698-99 (discussion of Rule 1404(b)).

Based on that holding, this document amends Rule 1404(b) to provide that the Board will dismiss such motions without prejudice to refile. The document also makes conforming changes to Rule 1409(b) (38 CFR 1409(b)) to provide that the dismissal without prejudice of a CUE motion is not a final decision of the Board.

This interim final rule concerns rules of agency procedure and practice. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and a delayed effective date.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from