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Joseph H. Grant,

*Deputy Executive Director and Chief,
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-02-113]

RIN 2115-AE47

Drawbridge Operation Regulations: Harlem River, Newtown Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the operation of the Willis Avenue Bridge, mile 1.5, and the Madison Avenue Bridge, mile 2.3, both across the Harlem River, and the Pulaski Bridge, mile 0.6, across Newtown Creek in New York City, New York. This temporary final rule allows the bridge owner to close the above three bridges on November 3, 2002, as follows: Willis Avenue and Madison Avenue bridges from 10 a.m. to 5 p.m. and the Pulaski Bridge from 8:30 a.m. to 3 p.m. This action is necessary to facilitate public safety during the running of the New York City Marathon.

DATES: This rule is effective on November 3, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01-02-113) 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 in the **Federal Register**.

Conclusive information about the New York City Marathon was not

provided to the Coast Guard until September 12, 2002, making it impossible to draft or publish a NPRM. This closure is not expected to have a significant impact on navigation because vessel traffic on the Harlem River and Newtown Creek is mostly commercial vessels that normally pass under the draws without openings. The 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 marathon participants.

Background and Purpose

The Willis Avenue Bridge, mile 1.5, across the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 30 feet at mean low water (MLW) in the closed position. The Madison Avenue Bridge, mile 2.3, across the Harlem River has a vertical clearance of 25 feet at MHW and 29 feet at MLW in the closed position. The Pulaski Bridge across Newtown Creek, mile 0.6, has a vertical clearance of 39 feet at MHW and 43 feet at MLW in the closed position.

The current operating regulations for the Willis Avenue and Madison Avenue bridges, listed at 33 CFR 117.789(c), require the bridges to open on signal from 10 a.m. to 5 p.m., if at least four-hours notice is given. The current operating regulations for the Pulaski Bridge listed at 117.801(g) require it to open on signal if at least a two-hour advance notice is given.

The bridge owner, New York City Department of Transportation (NYCDOT), requested a temporary change to the operating regulations governing the Willis Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to allow the bridges to remain in the closed position at different times on November 3, 2002, to facilitate the running of the New York City Marathon. Vessels that can pass under the bridges without bridge openings may do so at all times during these bridge closures.

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 Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the requested closures are of short duration and on Sunday when there have been few requests to open these bridges.

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 the bridge closures are of short duration and on Sunday when there have been few requests to open these bridges.

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

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; 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. On November 3, 2002, from 10 a.m. to 5 p.m., § 117.789 paragraph (c) is temporarily suspended and a new paragraph (h) is added to read as follows:

§ 117.789 Harlem River.

* * * * *

(h) The draws of the bridges at 103rd Street, mile 0.0, 3rd Avenue, mile 1.9, 145th Street, mile 2.8, Macombs Dam, mile 3.2, 207th Street, mile 6.0, and the two Broadway Bridges, mile 6.8, shall open on signal if at least four-hours notice is given to the New York City Highway Radio (Hotline) Room. The Willis Avenue Bridge, mile 1.5, and Madison Avenue Bridge, mile 2.3, need not open for vessel traffic.

3. On November 3, 2002, from 8:30 a.m. to 3 p.m., in § 117.801, paragraph (g) is temporarily 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 Pulaski Bridge, mile 0.6, across Newtown Creek, need not open for vessel traffic. The Greenpoint Avenue Bridge, mile 1.3, across Newtown Creek between Brooklyn and Queens, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office.

Dated: October 3, 2002.

J.L. Grenier,

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

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-02-112]

RIN 2115-AE47

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Atlantic Beach Bridge, at mile 0.4, across Reynolds Channel at New York. This rule allows the bridge owner to open only one lift span for bridge openings, 7 a.m. to 5 p.m., from November 1, 2002 through November 30, 2002. Two span openings will be granted, provided a two-hour advance notice is given, from one hour before to one hour after predicted high tide. This single span operation is necessary to facilitate bridge painting operations at the bridge.

DATES: This rule is effective from November 1, 2002 through November 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01-02-112) 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. Joe 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 less than 30 days after publication in the **Federal Register**.

The Coast Guard believes notice and comment are unnecessary because the bridge painting work that will be performed under this temporary final rule is a continuation, for one extra month, of work previously approved by a temporary final rule published on April 25, 2002 (67 FR 20442) entitled