

F. Narrowing Appeals. To expedite the resolution of appeals and minimize backlogs, the Executive Secretary is authorized to consult with appellants with the objective of narrowing or prioritizing the information subject to the appeal.

G. Resolution of Appeals. The ISCAP may vote to affirm the agency's decision, to reverse the agency's decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency's decision requires the affirmative vote of at least a majority of the members present.

H. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP's decision.

I. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

J. Protection of Classified Information. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information that is subject to an appeal from an agency decision denying declassification under the mandatory review provisions of the Order shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency's failure to prescribe or follow appropriate procedures for handling mandatory review for declassification requests and appeals.

K. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP. All information declassified as a result of ISCAP action shall be available for inclusion within the databases delineated in section 3.7 of the Order.

Article IX. Information Owned or Controlled by the Director of Central Intelligence (DCI)

Notwithstanding any conclusion reached by the ISCAP that information owned or controlled by the DCI should be declassified, if the DCI disagrees because he or she has made a determination as set forth in section 5.3(f) of the Order, and he or she so notifies the Panel, the information shall remain classified. The Panel expects notification to normally be made in writing within 60 days of receipt of the Panel's written notification of such a conclusion. In the event that the DCI requires additional time to provide notification to the Panel, the DCI, his or her deputy, or the DCI's primary or alternate Panel member, shall notify the Panel, in writing, of the need for additional time, not to exceed an additional 30 days. Following receipt of the DCI's determination, the Panel, by majority vote, or an agency head represented on the Panel, may petition the President, through the Assistant to the President for National Security Affairs, to reverse the DCI's determination. Such petitions must be made within 60 days of receipt of the DCI's determination. If the Panel has not been notified of the DCI's

determination within 60 days (or if additional time is requested as outlined above, within 90 days) of the date that the DCI has been notified of the Panel's conclusion, the information shall be declassified, pending resolution of any appeals filed pursuant to section I of Article VIII of these bylaws.

Article X. Additional Functions

In its consideration of the matters before it, the ISCAP shall perform such additional advisory functions as are consistent with and supportive of the successful implementation of the Order.

Article XI. Support Staff

As provided in section 5.3(a) of the Order, the Director of the Information Security Oversight Office will serve as Executive Secretary to the ISCAP, and the staff of the Information Security Oversight Office will provide program and administrative support for the ISCAP. The Executive Secretary will supervise the staff in this function pursuant to the direction of the Chair and ISCAP. On an as needed basis, the ISCAP may seek detailees from its member agencies to augment the staff of the Information Security Oversight Office in support of the ISCAP.

Article XII. Records

A. Integrity of ISCAP Records. The Executive Secretary shall maintain separately documentary materials, regardless of their physical form or characteristics, that are produced by or presented to the ISCAP or its staff in the performance of the ISCAP's functions, consistent with applicable federal law.

B. Referrals. Any Freedom of Information Act request or other access request for a document that originated within an agency other than the ISCAP shall be referred to that agency for processing.

Article XIII. Annual Reports to the President

The ISCAP has been established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States (section 5.3(e) of the Order). As provided in section 5.3(a) of the Order, pertinent information and data about the activities of the ISCAP shall be included in the Reports to the President issued by the Information Security Oversight Office. The Chair, in coordination with the other members of the ISCAP and the Executive Secretary, shall determine what information and data to include in each Report.

Article XIV. Approval, Amendment, and Publication of Bylaws

The approval and amendment of these bylaws shall require the affirmative vote of at least four of the ISCAP's members. In accordance with the Order, the Executive Secretary shall submit the approved bylaws and their amendments for publication in the **Federal Register**.

Dated: March 26, 2004.

J. William Leonard,

Director, Information Security Oversight Office.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08-04-007]

RIN 1625-AA09

Drawbridge Operation Regulation; Bayou Portage, Pass Christian, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule; request for comments.

SUMMARY: The Coast Guard is temporarily changing the requirements for the operation of the draw of the Henderson Avenue bascule span bridge across the Bayou Portage, mile 2.0 at Pass Christian, Harrison County, Mississippi. This temporary rule will establish the same two-hour notice requirement for an opening of the draw for the new bridge that were in effect for the old bridge prior to its removal. The new Henderson Avenue bascule span bridge has greater navigational clearances than the bridge it replaced and more vessels are expected to be able to transit the bridge without requiring an opening. The temporary rule will provide interim operating requirements for the Henderson Avenue bascule span bridge while the Coast Guard conducts a rulemaking to implement permanent regulations for the operation of the bridge. Comments must be received by June 1, 2004.

DATES: This rule is effective from 6 a.m. on April 10, 2004 through 6 p.m. on October 10, 2004.

ADDRESSES: You may mail comments and related material to Commander (obc), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130-3310. Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at (504) 589-2965.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material on the temporary operating requirements. If you do so, please include your name and address, identify the docket number for this temporary rulemaking [CGD08-04-010], 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 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 temporary rule in view of them.

Good Cause for Not Publishing an NPRM

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 good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. This temporary rule establishes the same operating requirements for the new Henderson Avenue bascule span bridge that were in effect for the old bridge that was removed. The new bridge has greater navigational clearances than the bridge it replaced and more vessels are expected to be able to transit the bridge without requiring an opening.

While the temporary rule is in effect, mariners and other interested parties may provide comments and information relative to the effectiveness of the temporary drawbridge operation change. The Coast Guard may change this temporary rule based on comments received.

Background and Purpose

The old low-level bascule span bridge has been demolished and removed and the new, mid-level bascule span bridge is being constructed on the exact same alignment. It will be opened to traffic and placed in service on April 10, 2004. The old bridge provided a vertical clearance of 11 feet above mean high water in the closed-to-navigation position and a horizontal clearance of 70 feet between fenders. The replacement mid-level bascule span bridge provides a vertical clearance of 29.5 feet above mean high water in the

closed-to-navigation position with a horizontal clearance of 75.5 feet between fenders. A special operating regulation was in place for the old bridge, which stated that the draw of the bridge would open on signal if at least two hours notice was given. When the old bridge was removed, the special operating regulation was removed. When the new bridge is completed and placed in service, it would normally be required to open on signal as required by 33 CFR 117.5.

Since the new bridge is constructed on the exact same alignment and it provides a significantly greater vertical clearance in the closed-to-navigation position than the old bridge, the Harrison County Board of Supervisors predicts that even fewer navigation openings will be requested than were required for the old bridge and has requested that a two-hour notice for an opening to navigation be established for the new bridge. This temporary rule will allow the bridge to operate on the same schedule as the old bridge six months, from April 10, 2004, through October 10, 2004. During this period, data will be collected, including the number of vessels which pass through the bridge each day, not requiring an opening and those that do require an opening. The Coast Guard will review the data including logs of drawbridge openings and evaluate public comment to help determine if a permanent special drawbridge operating regulation is appropriate.

Concurrent with publishing this temporary rule, the Coast Guard is also publishing a notice of proposed rulemaking elsewhere in today's **Federal Register**, [CDD08-04-010], proposing to make this temporary requirement a permanent change to the bridge operation.

Navigation at the site of the bridge consists primarily of recreational pleasure craft, including sailing vessels, and tugs with barges in tow which service one concrete facility upstream of the bridge. Alternate routes are not available to marine traffic.

The temporary rule provides that from 6 a.m. on April 10, 2004 through 6 p.m. on October 10, 2004 the draw of the Henderson Avenue bascule span bridge across Bayou Portage, mile 2.0 at Pass Christian, MS will open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

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).

A special operating regulation existed for the old bridge, which also required a two-hour notice for an opening of the draw. During the many years that the old bridge operated under that regulation, the Coast Guard did not receive any complaints regarding the drawbridge operating schedule. The new replacement bridge provides significantly greater navigational clearances than the old bridge, and the number of openings are predicted to correlate with the increased clearances. Commercial navigation is expected to be able to move more freely through the new structure. 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.

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. These entities include the operators of vessels, which service a concrete facility, the only business located on Bayou Portage upstream of the bridge. This rule will have no impact on any small entities because the temporary regulation applies to a bridge with greater navigational clearances than the bridge it replaced which had the same regulation before it was removed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can 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 a 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 the 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 cause 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. 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.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 (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA.

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. From 6 a.m. on April 10, 2004, through 6 p.m. on October 10, 2004, § 117.T684 is added to read as follows:

§ 117.T684 Bayou Portage.

The draw of the Henderson Avenue Bridge, mile 2.0, at Pass Christian, shall open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Dated: March 8, 2004.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 04-7272 Filed 3-31-04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-04-008]

RIN 1625-AA09

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Long Beach Bridge, at mile 4.7, across Reynolds Channel, New York. This temporary final rule will allow the bridge to operate only one lift span for openings, on the even hour, 8 a.m. to 4 p.m., daily, from May 1, 2004 through December 1, 2004. This action is necessary to complete structural repairs at the bridge.

DATES: This temporary final rule is effective from May 1, 2004 through December 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01-04-008) 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. Gary Kassof, Project Officer, First Coast Guard District, (212) 668-7165.

SUPPLEMENTARY INFORMATION: