

compensation equal to 6 percent of the net profits from the activity or \$15,000, whichever is greater. A is considered to have an interest in the net profits from the activity and accordingly will be treated as a person with an interest in the activity other than that of a creditor.

(c) *Nonrecourse loans secured by assets with a readily ascertainable fair market value*—(1) *General rule.* This paragraph shall apply in the case of a nonrecourse loan for use in an activity where the loan is secured by property which has a readily ascertainable fair market value. In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

(2) *Example.* The provisions of this paragraph (c) may be illustrated by the following example:

*Example.* X is an investor in an activity described in section 465(c)(1). In order to raise money for the investment, X borrows money from A, the promoter (the person who brought X together with other taxpayers for the purpose of investing in the activity). The loan is secured by stock unrelated to the activity which is listed on a national securities exchange. X's stock has a readily ascertainable fair market value. A does not have a capital interest in the activity or an interest in its net profits. Accordingly, with respect to the loan secured by X's stock, A does not have an interest in the activity other than that of a creditor.

(d) *Nonrecourse loans secured by assets without a readily ascertainable fair market value*—(1) *General rule.* This paragraph shall apply in the case of a nonrecourse loan for use in an activity where the loan is secured by property which does not have a readily ascertainable fair market value. In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor if the person stands to receive financial gain (other than interest) from the activity or from the sale of interests in the activity. For the purposes of this section persons who stand to receive financial gain from the activity include persons who receive compensation for services rendered in connection with the organization or operation of the activity or for the sale of interests in the activity. Such a person will generally include the promoter of the activity who organizes the activity or solicits potential investors in the activity.

(2) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

*Example.* A is the promoter of an activity described in section 465(c)(1). As the

promoter, A organizes the activity and solicits potential investors. For these services A is paid a flat fee of \$130x. This fee is paid out of the amounts contributed by the investors to the activity. X, one of the investors in the activity, borrows money from A for use in the activity. X is not personally liable for repayment to A of the amount borrowed. As security for the loan, X pledges an asset which does not have a readily ascertainable fair market value. A is considered a person with an interest in the activity other than that of a creditor with respect to this loan because the asset pledged as security does not have a readily ascertainable fair market value, X is not personally liable for repayment of the loan, and A received financial gain from the activity. Accordingly, X's amount at risk in the activity is not increased despite the fact that property was pledged as security.

(e) *Effective date.* This section applies to amounts borrowed after May 3, 2004.

**§ 1.465-20 Treatment of amounts borrowed from certain persons and amounts protected against loss.**

(a) *General rule.* The following amounts are treated in the same manner as borrowed amounts for which the taxpayer has no personal liability and for which no security is pledged—

(1) Amounts that do not increase the taxpayer's amount at risk because they are borrowed from a person who has an interest in the activity other than that of a creditor or from a person who is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor; and

(2) Amounts (whether or not borrowed) that are protected against loss.

(b) *Interest other than that of a creditor; cross reference.* See § 1.465-8 for additional rules relating to amounts borrowed from a person who has an interest in the activity other than that of a creditor or is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor.

(c) *Amounts protected against loss; cross reference.* See § 1.465-6 for rules relating to amounts protected against loss.

(d) *Effective date.* This section applies to amounts borrowed after May 3, 2004.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

**Gregory F. Jenner,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 04-10010 Filed 4-30-04; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD07-03-166]

RIN 1625-AA09

**Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Miles 1062.6 and 1064.0 in Fort Lauderdale, Broward County, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations governing the operation of the East Sunrise Boulevard (SR 838) and East Las Olas bridges, mile 1062.6 and 1064.0 in Fort Lauderdale, Broward County, Florida. These drawbridges will be allowed to remain closed to navigation for periods of time during the first weekend of May to facilitate vehicle traffic flow to and from the Air and Sea Show each year.

**DATES:** This rule is effective May 3, 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 [CGD07-03-166] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Branch, Seventh District maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415-6744.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On January 16, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Miles 1062.6 and 1064.0 in Fort Lauderdale, FL in the **Federal Register** (69 FR 2552). We received one letter commenting on the notice of proposed rulemaking. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is necessary to effectuate the rule immediately in order to enhance

public safety during a weekend of increased vehicular and pedestrian traffic flow. Enactment of this rule 30 days after publication is thus impracticable and contrary to the public interest.

#### **Background and Purpose**

The East Las Olas Boulevard bridge, mile 1064.0, has a vertical clearance of 31 feet above mean high water and a horizontal clearance of 91 feet between the fenders. The existing regulation in 33 CFR 117.5 requires the bridge to open on signal.

The East Sunrise Boulevard bridge (SR 838), mile 1062.6, has a vertical clearance of 25 feet at mean high water and a horizontal clearance of 90 feet between the fenders. The existing regulation at 33 CFR 117.261 (gg) requires the bridge to open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

Annually, the City of Fort Lauderdale Police Department, on behalf of the City of Fort Lauderdale, requests that the Coast Guard temporarily change the operating regulations for these bridges during parts of the annual Air and Sea Show to allow the considerable volume of vehicular and pedestrian traffic to be routed as safely and quickly as possible. This final rule would require the East Sunrise Boulevard (SR 838) and East Las Olas bridges in Fort Lauderdale, Florida to remain closed to navigation from 4 p.m. to 6 p.m. and from 9:45 p.m. to 10:45 p.m. on Saturday, and from 4 p.m. to 6 p.m. on Sunday, the first weekend of May.

#### **Discussion of Comments and Changes**

We received one comment on the notice of proposed rulemaking in favor of the new operating schedule.

#### **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 rule will modify the existing bridge schedule to allow for efficient vehicle traffic flow

and provide scheduled openings for vessel traffic.

#### **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 may be small entities: the owners or operators of vessels intending to transit the Intracoastal Waterway in the vicinity of the East Sunrise Boulevard (SR 838) and East Las Olas bridges and persons intending to drive over the bridge and nearby business owners. Owners or operators of vessels that require a bridge opening will not be able to transit in the area during the periods the bridges remain closed. Since the change to the current regulation increases the amount of time the bridges will remain closed to five hours over a two day period and bridge openings are still provided for, the rule will not be significant for small entities.

#### **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 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 would not create an environmental risk to health or risk to safety that might 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 M16475.1D, 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. Under figure 2-1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

#### 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; 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. In § 117.261 redesignate paragraph (hh) as paragraph (ii), revise paragraph (gg) and add a new paragraph (hh) to read as follows:

#### § 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

\* \* \* \* \*

(gg) The draw of the East Sunrise Boulevard bridge (SR 838), mile 1062.6 at Fort Lauderdale shall open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. On the first weekend in May, the draw

need not open from 4 p.m. to 6 p.m. on Saturday and Sunday, and, on the first Saturday in May, the draw need not open from 9:45 p.m. to 10:45 p.m.

(hh) The draw of the East Las Olas bridge, mile 1064 at Fort Lauderdale shall open on signal; except that on the first weekend in May the draw need not open from 4 p.m. to 6 p.m. on Saturday and Sunday, and, on the first Saturday in May, the draw need not open from 9:45 p.m. to 10:45 p.m.

\* \* \* \* \*

Dated: April 16, 2004.

**Harvey E. Johnson, Jr.,**

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

[FR Doc. 04-9907 Filed 4-30-04; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

#### 44 CFR Part 206

RIN 1660-AA19

#### Disaster Assistance Definitions; Statutory Change

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim final rule.

**SUMMARY:** FEMA is publishing an interim final rule to amend the definitions of "Local government," "State," and "United States" as set forth in 44 CFR 206.2 to coincide with those definitions established by the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This rule takes effect immediately, but before publishing a final rule on this subject, FEMA requests and invites comments from all interested or affected parties.

**EFFECTIVE DATE:** Effective May 3, 2004. FEMA invites comments on this interim final rule, which should be received by FEMA on or before July 2, 2004.

**ADDRESSES:** Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202-646-4536, or (email) [FEMA-RULES@dhs.gov](mailto:FEMA-RULES@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Michael S. Herman, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472,

(facsimile) 202-646-4536, or (email) [Michael.S.Herman@dhs.gov](mailto:Michael.S.Herman@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Disaster Mitigation Act of 2000, Public Law 106-390, 114 Statutes at Large 1552 *et seq.* was enacted on October 30, 2000, and amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5204c (the Stafford Act). Among these changes were the definitions of "Local government" in 42 U.S.C. 5122(6), "State" in 42 U.S.C. 5122(4), and "United States" in 42 U.S.C. 5122(3). Corresponding definitions of these terms can be found in 44 CFR 206.2(a). FEMA is issuing this interim final rule to amend the definitions of "Local government," "State," and "United States" found in 44 CFR 206.2(a) so that these definitions match the statutory authority.

The definition of "Local government" is amended for clarification, and among other changes, includes: a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government. FEMA believes that this definition codifies the agencies' interpretation of the previous definition of local government, except for a council of government, which was added by statute.

The definition of "State" is changed to delete reference to the Trust Territory of the Pacific Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands. The definition of "State" is now any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

The definition of "United States" has been changed to correct the name of the Commonwealth of the Northern Mariana Islands and to delete reference to the Trust Territory of the Pacific Islands. The definition of the "United States" is now the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

#### National Environmental Policy Act

This interim final rule falls within the 44 CFR 10.8(d)(2)(ii) exclusion category, which addresses the preparation, revision, and adoption of regulations,