

Dated: May 20, 2004.

John L. Grenier,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-04-021]

RIN 1625-AA09

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Triborough (125th Street) Bridge, mile 1.3, across the Harlem River at New York City, New York. This temporary final rule allows the bridge owner to require a forty-eight hour notice for bridge openings from June 1, 2004, through January 31, 2005. This action is necessary to facilitate structural rehabilitation at the bridge.

DATES: This rule is effective from June 1, 2004, through January 31, 2005.

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 (CGD01-04-021) and are available for inspection or copying the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668-7069.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 5, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Harlem River, New York, in the **Federal Register** (69 FR 17616). Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal**

Register. Making this rule effective in less than 30 days is necessary in order to allow bridge repairs to start on June 1, 2004. The Coast Guard believes this is reasonable since the bridge has not received an opening request in over three years.

Background and Purpose

The Triborough (125th Street) Bridge has a vertical clearance of 54 feet at mean high water and 59 feet at mean low water in the closed position.

The existing drawbridge operation regulations listed at 33 CFR 117.789(d) require the bridge to open on signal from 10 a.m. to 5 p.m. after at least a four-hour notice is given.

The owner of the bridge, the Triborough Bridge and Tunnel Authority (TBTA), requested a temporary change to the drawbridge operation regulations to allow the bridge owner to require a forty-eight hour notice for bridge openings from June 1, 2004, through January 31, 2004, to facilitate structural rehabilitation of the bridge. The Triborough (125th Street) Bridge has not received any requests to open for the past three years.

The bridge owner plans to replace the structural steel deck system at the bridge between June 1, 2004, and January 31, 2005. Temporary concrete roadway barriers will be used to redirect vehicular traffic over the bridge to facilitate lane closures required to structurally rehabilitate sections of the bridge roadway steel decking.

Under the existing drawbridge operation regulations, which require a four-hour advance notice, unscheduled bridge opening requests would be impossible to grant. Such openings would be impossible because of the time needed to safely remove construction equipment, concrete barriers, and construction workers from the lift span. The additional advanced notice will allow time for the bridge operators to properly remove construction materials so that the bridge may operate safely upon request for an opening. Additionally, the Coast Guard believes the requested forty-eight hour advance notice requirement is reasonable based upon the lack of bridge opening requests over the past three years.

Discussion of Comments and Changes

We received no comment letters in response to the notice of proposed rulemaking. No changes were made to this final rule.

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). This conclusion is based on the fact that the bridge has received no vessel traffic for the past three years, thus there will be little, if any, impact on vessel traffic by the increased advance notice requirement. The bridge will continue to open for vessel traffic with 48 hours advance notice.

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 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. The reasoning for this conclusion is the same as that found under the "Regulatory Evaluation" section.

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 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this final 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. It has been determined that this final rule does not significantly impact the environment. Under figure 2–1, paragraph (34)(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 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. In § 117.789, from June 1, 2004 through January 31, 2005, paragraph (d) is temporarily suspended and a new temporary paragraph (h) is added to read as follows:

§ 117.789 Harlem River.

* * * * *

(h) The draw of the Triborough (125th Street) Bridge, mile 1.3, shall open on signal from 10 a.m. to 5 p.m. if at least a forty-eight hour notice is given.

Dated: May 20, 2004.

John L. Grenier,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–053]

RIN 1625–AA00

Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones in portions of the waters around Stapleton Homeport Pier in Upper New York Bay, and the New York City Passenger Ship Terminal and Intrepid Museum in the Hudson River and a moving security zone around each participating vessel in the 2004 Fleet Week parade. This action is necessary to safeguard Naval and Coast Guard vessels, critical port infrastructure and coastal facilities from sabotage, subversive acts, or other threats. This rule prohibits entry into or movement within these security zones without authorization from the Captain of the Port New York.

DATES: This rule is effective from 8 a.m., May 24, 2004, until 8 p.m., June 2, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–