

(iii) For purposes of paragraph (a)(1)(i) of this section, the term *gross income*, as it relates to any income other than from the sale of goods or services in a trade or business, has the same meaning as provided under section 61(a), and includes the total of the amounts received or accrued, to the extent required to be shown on the return. In the case of amounts received or accrued that relate to the disposition of property, and except as provided in paragraph (a)(1)(ii) of this section, *gross income* means the excess of the amount realized from the disposition of the property over the unrecovered cost or other basis of the property. Consequently, except as provided in paragraph (a)(1)(ii) of this section, an understated amount of gross income resulting from an overstatement of unrecovered cost or other basis constitutes an omission from gross income for purposes of section 6501(e)(1)(A).

(iv) An amount shall not be considered as omitted from gross income if information sufficient to apprise the Commissioner of the nature and amount of the item is disclosed in the return, including any schedule or statement attached to the return.

(2) [Reserved]

(b) *Effective/applicability date.* The rules of this section apply to taxable years with respect to which the applicable period for assessing tax did not expire before September 24, 2009.

(c) *Expiration date.* The applicability of this section expires on or before September 24, 2012.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: September 23, 2009.

**Michael Mundaca,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0202]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Raritan River, Arthur Kill and Their Tributaries, Staten Island, NY and Elizabeth, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard changed the drawbridge operating regulations governing the operation of the Arthur Kill (AK) Railroad Bridge at mile 11.6, across Arthur Kill and the New Jersey Transit (NJTRO) Railroad Bridge at mile 0.5, across the Raritan River. This final rule is expected to better meet the present needs of navigation and enhanced needs of rail traffic resulting from the resumption of rail traffic across the Arthur Kill (AK) Bridge.

**DATES:** This rule is effective October 28, 2009.

**ADDRESSES:** Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket (USCG-2009-0202) and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0202 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Gary Kassof, Project Officer, First Coast Guard District, telephone 212-668-7165, e-mail [gary.kassof@uscg.mil](mailto:gary.kassof@uscg.mil). If you have any questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On June 24, 2009, we published an interim rule entitled "Drawbridge Operation Regulations"; Raritan River, Arthur Kill and their tributaries, Staten Island and Elizabeth, New Jersey, in the *Federal Register* (74 FR 29941). We received no comments on the interim rule. No public meeting was requested, and none was held.

##### Background and Purpose

The Arthur Kill (AK) Railroad Bridge at mile 11.6, across Arthur Kill, has a vertical clearance of 31 feet at mean high water, and 35 feet at mean low water in the closed position. The New Jersey Transit (NJTRO) Railroad Bridge at mile 0.5, across the Raritan River, has a vertical clearance of 8 feet at mean high water and 13 feet at mean low water in the closed position.

The previous drawbridge operating regulations listed at 33 CFR 117.747,

required the draws of all bridges across the Raritan River, Arthur Kill and their tributaries to open on signal at all times; except that, from 7:30 a.m. to 10 a.m. and from 5 p.m. to 7:30 p.m., the draws may be opened for the passage of vessels for periods no longer than ten minutes or remain closed for the passage of land traffic for no longer than ten minutes.

The New Jersey Transit Railroad Bridge at mile 0.5, across the Raritan River and the Arthur Kill (AK) Railroad Bridge at mile 11.6, across Arthur Kill were the only drawbridges operating under this regulation.

Rail traffic was suspended for many years on the rail line that crosses the Arthur Kill (AK) Bridge. During the time rail traffic was suspended across Arthur Kill the Arthur Kill (AK) Railroad Bridge was locked in the full open position.

Several years ago the Arthur Kill (AK) Railroad Bridge was mechanically and structurally rehabilitated as part of New York City Economic Development Corporation's Full Freight Access Initiative, and restored to good operating condition in 2007 enabling restoration of rail freight service across the Arthur Kill (AK) Railroad Bridge to the Staten Island Landfill facility and the New York Container Terminal, formerly known as the Howland Hook Terminal. Rail traffic began crossing the re-opened bridge in June of 2007.

After a short period of time, it became apparent, that the then existing drawbridge operation regulations, would no longer effectively meet the present complex needs of navigation and the revitalized volume of rail traffic that would be crossing the Arthur Kill (AK) Railroad Bridge.

The bridge owner, New York City Economic Development Corporation (NYCEDC), requested a change to the drawbridge operation regulations to help facilitate the resumption of rail traffic crossing the Arthur Kill (AK) Railroad Bridge.

As a result of the above described transition in the needs of commerce, the Coast Guard conducted an evaluation, comprised of three temporary test deviations and an interim rule, with public comment periods, to help determine the best drawbridge operation regulations to meet the present and future needs of marine and rail transportation.

Each test deviation modified the previous test as a result of their observed effectiveness and comments received from the public.

After evaluating the results of our third temporary deviation the Coast Guard concluded that the operating procedure tested in the third deviation

was the most reasonable and effective drawbridge operation regulation which best addressed the present and future needs of navigation and rail traffic.

We then implemented an interim rule with request for comment, in order to allow the operating procedures tested by our third deviation to become effective the day after that third deviation ended.

#### Discussion of Comments and Changes

The Coast Guard received no comment letters in response to the interim rule. As a result, no changes have been made to this final rule.

#### Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

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.

This conclusion is based on the fact that this final rule is not a significant regulatory action. This conclusion is based upon the fact that vessel and rail traffic will both be able to transit over and through the Arthur Kill (AK) Railroad Bridge under a balanced and reasonable schedule.

#### 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 commercial marine traffic and rail traffic will both be able to transit over and through the Arthur (AK) Railroad Bridge under a balanced and reasonable schedule.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), in the NPRM 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.

No small entities requested Coast Guard assistance and none was given.

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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 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 this 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 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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 rule under Department of Homeland Security Management Directive 023-01 and 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 this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

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

Bridges.

■ 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; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new § 117.702 to read as follows:

##### § 117.702 Arthur Kill

(a) The draw of the Arthur Kill (AK) Railroad Bridge shall be maintained in the full open position for navigation at all times, except during periods when it is closed for the passage of rail traffic.

(b) The bridge owner/operator shall maintain a dedicated telephone hot line for vessel operators to call the bridge in advance to coordinate anticipated bridge closures. The telephone hot line number shall be posted on signs at the bridge clearly visible from both the up and downstream sides of the bridge.

(c) Tide restrained deep draft vessels shall notify the bridge operator, daily, of their expected times of vessel transits through the bridge, by calling the designated telephone hot line.

(d) The bridge shall not be closed for the passage of rail traffic during any predicted high tide period if a tide restrained deep draft vessel has provided the bridge operator with an advance notice of their intent to transit

through the bridge. For the purposes of this regulation, the predicted high tide period shall be considered to be from two-hours before each predicted high tide to a half-hour after each predicted high tide taken at the Battery, New York.

(e) The bridge operator shall issue a manual broadcast notice to mariners of the intent to close the bridge for a period of up to thirty minutes for the passage of rail traffic, on VHF-FM channels 13 and 16 (minimum range of 15 miles) 90-minutes before and again at 75-minutes before each bridge closure.

(f) Beginning at 60 minutes prior to each bridge closure, automated or manual broadcast notice to mariners must be repeated at 15 minute intervals and again at 10 and 5 minutes prior to each bridge closure and once again as the bridge begins to close and appropriate sound signal given.

(g) Two fifteen minute bridge closures may be provided each day for the passage of multiple rail traffic movements across the bridge. Each fifteen minute bridge closure shall be separated by at least a thirty minute period when the bridge is returned to and remains in the full open position. Notification of the two fifteen minute closures shall follow the same procedures outlined in paragraphs e and f above.

(h) A vessel operator may request up to a 30 minute delay for any bridge closure in order to allow vessel traffic to meet tide or current requirements; however, the request to delay the bridge closure must be made within 30 minutes following the initial broadcast for the bridge closure. Requests received after the initial 30 minute broadcast will not be granted.

(i) In the event of a bridge operational failure, the bridge operator shall immediately notify the Coast Guard Captain of the Port New York. The bridge owner/operator must provide and dispatch a bridge repair crew to be on scene at the bridge no later than 45 minutes after the bridge fails to operate. A repair crew must remain at the bridge at all times until the bridge has been fully restored to normal operations or the bridge must be raised and locked in the fully open position.

■ 3. Section 117.747 is revised to read as follows:

##### § 117.747 Raritan River

(a) The draw of New Jersey Transit Rail Operations Railroad Bridge at mile 0.5 shall open on signal; except that, from 6 a.m. to 9:30 a.m. and 4:30 p.m. to 7:30 p.m., Monday through Friday, except holidays, the bridge need not open.

(b) The bridge owner shall provide and keep in good legible condition two clearance gauges with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(c) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before the bridge may be opened.

Dated: September 8, 2009.

**Joseph L. Nimmich,**

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

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0864]

#### Drawbridge Operation Regulation; Cape Fear River and Northeast Cape Fear River, Wilmington, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Cape Fear River Memorial Bridge at mile 26.8 and the Isabel S. Holmes Bridge at mile 1.0 across Northeast Cape Fear River at Wilmington NC. The deviation is necessary to accommodate a road race. This deviation allows the bridges to remain in the closed position to vessels.

**DATES:** This deviation is effective from 8 a.m. to 10 a.m. on October 4, 2009.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0864 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0864 in the "Keyword" box and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590,