

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG-2009-0754]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a supplemental change to the regulations that govern the operation of the of the Berkley (I-264) Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River, Norfolk, VA. The new proposal would continue to provide set openings periods for the bridge during the day, relieving vehicular traffic congestion during the weekday daytime hours, while still providing for the reasonable needs of navigation to include new operating procedures for transiting vessels.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 1, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0754 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* 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.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District, telephone (757) 398-6587, e-mail [terrance.a.knowles@uscg.mil](mailto:terrance.a.knowles@uscg.mil). If you have questions on viewing or submitting

material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0754), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2009-0754" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble

as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2009-0754" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

On October 9, 2009, we published a notice of temporary deviation request for comments entitled; "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA, in the **Federal Register** (74 FR 52143) and a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA, in the **Federal Register** (74 FR 52158). We received 861 comments for both the temporary deviation and NPRM. No public meeting was requested, and none was held.

##### **Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

On behalf of the Cities of Chesapeake and Norfolk Virginia, the Virginia Department of Transportation (VDOT), who owns and operates the lift-type Berkley Bridge, requested a temporary change to the existing bridge regulations. In the closed to navigation position, the Berkley Bridge has a vertical clearance of 48 feet above mean

high water. The current regulation set out in Title 33 CFR Part 117.1007 (b) and (c) allows the Berkley Bridge, mile 0.4, in Norfolk, VA, to remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic. In addition, the bridge shall open on signal any time except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, and shall open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room at (757) 494-2490 as required by 33 CFR 117.1007(b) and (c). Vessel traffic on this waterway consists of pleasure craft, tug and barge traffic, and ships with assist tugs seeking repairs. There is no alternate waterway route.

Due to the temporary closure of two area bridges, the bridge and approaches experienced increased back-ups, delays, and congestion due to the increase in traffic. The NPRM would allow the draw of the Berkley Bridge to open on signal to vessels at 9 a.m., 11 a.m., 1 p.m., and 2:30 p.m. from October 9, 2009, to October 5, 2012, and it would permit VDOT to monitor, measure, and identify congested roadway locations during heavy traffic periods. By implementing scheduled bridge openings, we anticipated a decrease in traffic congestion during the daylight hours.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [USCG-2009-0754] was issued to allow VDOT to test the proposed schedule and to obtain data and public comments. The test period was in effect during the entire Notice of Proposed Rulemaking comment period. Also, a count of the delayed vessels during the closure periods was taken to ensure a future regulation will not have a significant impact on navigation. The Berkley Bridge is the principle arterial route in and out of the City of Norfolk and serves as the major evacuation highway in the event of emergencies. The monthly vehicular traffic counts submitted by VDOT for the last quarter of calendar year 2008 show the average daily traffic volumes at the Berkley Bridge as shown below:

October, 2008—83,296 vehicles  
 November, 2008—99,643 vehicles  
 December, 2008—106,856 vehicles

The traffic counts revealed that from October 2008 to December 2008, the Berkley Bridge has experienced a seven percent (or 23,560-car) increase in traffic flow. The Coast Guard anticipates a continued increase in vehicular traffic over the bridge.

The Coast Guard received 861 comments on both the temporary deviation and NPRM. A large majority of the responses from commuters approved the scheduled opening set-up. However, the local maritime community expressed objections to the schedule change to vessels.

After review of all of the comments and bridge-related data received, the Coast Guard has determined that an alternative proposal should be considered.

By offering an alternative proposal, the changes will allow the draw of the Berkley Bridge to open on signal to the drawbridge operating schedule from September 4, 2010, to October 5, 2012. As a result of the changes, we expect a similar decrease in traffic congestion during the new proposed scheduled openings.

Concurrent with the publication of the Supplemental Proposed Rulemaking, another Test Deviation [USCG-2010-0083] has been issued to allow VDOT to test another proposed schedule and to acquire additional data and public comments.

#### Discussion of Comments and Changes

The Coast Guard received 861 responses to the NPRM. The vast majority of those responses (approximately 850) were supplied from an internet Web site survey posted by VDOT. Of the 850 VDOT-sponsored surveys, 484 had written comments with the remaining 366 remarks to the survey questionnaire. The other responses were supplied by 7 on-paper comments; and 4 e-mails.

An examination of the comments revealed that the vast majority of the responses (all but five) favored the new schedule presented in the temporary deviation and NPRM. Many responses stated travelers could better plan their commutes and allowed them the opportunity to avoid delays.

Four local maritime facilities and the Virginia Maritime Association (VMA), who represents waterborne commerce in the Port of Hampton Roads, responded in writing with their concerns opposing the new schedule. These organizations expressed concerns that the current regulatory actions created unsafe conditions for navigation. The maritime community has offered recommendations for changes to the operating regulations of the Berkley

Bridge that they believe will benefit the community and provide a reasonable balance between marine priority and road-based transportation.

The Coast Guard reviewed the bridge data supplied by VDOT. The information indicated that the test deviation reduced the amount of time the bridge opened for vessels. Between October 20, 2009, and December 30, 2009, there were approximately 85 vessel passages requiring 69 bridge openings. Most of these openings were provided for commercial vessels, with a maximum of four vessels transiting through a single bridge opening.

With an average of less than two openings per day (1.23) during the test deviation, VDOT contends that 2009 compared to 2008 in the same months, there was a 30 percent reduction in the number of minutes the bridge was opened for vessels and the number of openings also decreased by 21 percent. In 2009, the Berkley Bridge averaged 97,135 vehicles per day.

VDOT personnel, after consulting with VMA and local maritime facilities, identified a need for mariners to have more access transiting through the Berkley Bridge. The parties agreed to operating procedures for inclusion in the regulatory language.

The suggestions offered by VDOT and VMA were reviewed by the Coast Guard. The VDOT/VMA recommended operating procedures (*in italics*) that were considered and subsequently modified are:

1. *The bridge is to open on signal at any time for vessels carrying hazardous cargo.*
2. *The bridge is to open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room.*

VMA stated that certain vessels and conditions make safe bridge transits more difficult and dangerous. VMA/VDOT recommended establishing provisions that would exempt vessels from only transiting at the scheduled opening time.

The Coast Guard proposed the following: The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204; and for all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times: The draw shall open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control Room at (757) 494-2490.

3. *If a vessel has made prior arrangements for a delayed opening, and there are vessels awaiting transit, the opening may be delayed if the master(s) of the waiting vessel(s) agree to a delayed opening to accommodate the delayed vessel. Otherwise the opening will accommodate the waiting vessel(s) only, and close upon their clearing the bridge.*

VMA stated that communication between vessels is important to scheduling a single opening at the Berkley Bridge. The Coast Guard asserts that communication between vessels and the bridge tender should be coordinated to ensure and maintain the safety of navigation. However, specific regulatory language controlling communication between vessels is unwarranted and not within the scope of drawbridge operating regulations.

4. *An opening will be provided to a transiting vessel up to, but no more than, 30 minutes following the scheduled opening time provided the transiting vessel has communicated their estimated time of arrival to the Berkley Bridge tender prior to the scheduled opening time.*

VMA stated that the timing of large vessel movements is affected by a number of uncontrollable and external factors. The effects of winds, currents, and tides have an important impact on safe navigation and those conditions.

In addition, VMA indicated that the current test deviation creates a situation whereby marine traffic will stack up while waiting for an opening, thus creating vessel congestion, a navigational hazard.

For these situations, the Coast Guard proposed the following: If the bridge is not opened during a particular scheduled opening per subparagraph (d)(3)(ii) and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control Room at (757) 494-2490.

5. *The bridge is to open at any time if, in the professional judgment of the vessel operator, the environmental or operating conditions compromise navigational safety.*

The Coast Guard responded to this comment by indicating that under 33 CFR 117.31 entitled "Drawbridge

operations for emergency vehicles and emergency vessels", paragraphs (b)(2) adequately provide for unscheduled vessel openings of the bridge in the event of a marine emergency.

The supplemental rule was also rephrased to integrate the restricted morning and evening rush hour times (from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m.) with the test deviation period from 9 a.m. to 3 p.m. The Coast Guard suggested the following paragraph: For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays.

Based on all of the comments received, the Coast Guard suggested that a supplemental alternative proposal be further analyzed and reissued.

#### Discussion of Rule

From September 4, 2010, to October 5, 2012, the Coast Guard proposes to suspend the regulations at 33 CFR 117.1007 paragraphs (b) and (c) and add a new paragraph (d) to read as follows:

The draw of the Berkley Bridge, mile 0.4, at Norfolk, shall operate as follows: (1) The draw shall remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and shall remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic; (2) The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204; (3) For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays: (i) During these times, the draw shall open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control Room at (757) 494-2490; (ii) The draw shall open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.; (4) If the bridge is not opened during a particular scheduled opening per subparagraph (d)(3)(ii) and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the

Berkley Bridge Traffic Control Room at (757) 494-2490.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, and to minimize delays, vessels that can pass under the bridge without a bridge opening may do so at all times.

#### 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.

We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays and vessels that can pass under the bridge without a bridge opening may do so at all times.

#### 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). 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, eliminates 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 would 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. 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 proposed rule under Department of Homeland Security Management Directive 023-01,

and 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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; Department of Homeland Security Delegation No. 0170.1.

2. From September 4, 2010, to October 5, 2012, in § 117.1007, suspend paragraphs (b) and (c) and add new paragraph (d) to read as follows:

#### § 117.1007 Elizabeth River Eastern Branch.

\* \* \* \* \*

(d) The draw of the Berkley Bridge, mile 0.4, at Norfolk, shall operate as follows:

(1) The draw shall remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and shall remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic.

(2) The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204.

(3) For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall:

(i) Open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494-2490.

(ii) Open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.

(4) If the bridge is not opened during a particular scheduled opening per paragraph (d)(3)(ii) of this section and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494-2490.

Dated: February 11, 2010.

**Wayne E. Justice,**

*Rear Admiral, United States Coast Guard,  
Commander, Fifth Coast Guard District.*

[FR Doc. 2010-4362 Filed 3-2-10; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HOMELAND  
SECURITY**

**Federal Emergency Management  
Agency**

**44 CFR Part 67**

[Docket ID FEMA-2010-0003; Internal  
Agency Docket No. FEMA-B-1106]

**Proposed Flood Elevation  
Determinations**

**AGENCY:** Federal Emergency  
Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to

qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before June 1, 2010.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1106, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

Kevin C. Long, Acting Chief,  
Engineering Management Branch,  
Mitigation Directorate, Federal  
Emergency Management Agency, 500 C  
Street, SW., Washington, DC 20472,  
(202) 646-2820, or (e-mail)  
[kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.*

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows: