

Clearinghouse relating to an application filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 shall be forwarded to the Clearinghouse by the DoD Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the inquiry.

(b) A request for informal DoD review or any other inquiry related to matters covered by this part and received by a DoD Component other than the Clearinghouse shall be forwarded to the Clearinghouse by that Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the request.

#### **§ 211.9 Mitigation Options.**

(a) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the DoD Components designated to discuss mitigation with an applicant or requester shall, as appropriate and as time allows, analyze the following types of DoD mitigation to determine if they identify feasible and affordable actions that may be taken to mitigate adverse impacts of projects on military operations and readiness:

- (1) Modifications to military operations.
- (2) Modifications to radars or other items of military equipment.
- (3) Modifications to military test and evaluation activities, military training routes, or military training procedures.
- (4) Providing upgrades or modifications to existing systems or procedures.
- (5) The acquisition of new systems by the DoD and other departments and agencies of the Federal Government.

(b) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the applicant or requester, as the case may be, should consider the following possible actions:

- (1) Modification of the proposed structure, operating characteristics, or the equipment in the proposed project.
- (2) Changing the location of the proposed project.
- (3) Providing a voluntary contribution of funds to offset the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of the project on military operations and readiness.

#### **§ 211.10 Reporting Determinations to Congress.**

(a) Not later than 30 days after making a determination of unacceptable risk pursuant to section 211.6, the senior

officer shall submit to the congressional defense committees a report on such determination and the basis for such determination.

(b) Such a report shall include—

- (1) An explanation of the operational impact that led to the determination.
- (2) A discussion of the mitigation options considered.
- (3) An explanation of why the mitigation options were not feasible or did not resolve the conflict.

### **Subpart D—Communications and Outreach**

#### **§ 211.11 Communications With the Clearinghouse.**

All communications to the Clearinghouse by applicants, requesters, or members of the public should be addressed to:

Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), Room 5C646, 3400 Defense Pentagon, Washington, DC 20301–3400 or to such internet address as the Clearinghouse may provide.

#### **§ 211.12 Public Outreach.**

(a) The DoD shall establish a Web site accessible to the public that—

- (1) Lists the applications and requests for informal review the DoD is currently considering.
- (2) Identifies the stage of the action, e.g., preliminary review, referred for mitigation discussions, determined to be an unacceptable risk.
- (3) Indicates how the public may provide comments.

(b) The Clearinghouse shall publish a handbook to provide applicants, requesters, and members of the public with necessary information to assist them in participating in the Mission Compatibility Evaluation Process.

Dated: October 12, 2011.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

[Docket No. USCG–2011–0816]

RIN 1625–AA09

#### **Drawbridge Operation Regulation; Bear Creek, Sparrows Point, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is canceling a portion of an existing drawbridge operation regulation. The Baltimore County Revenue Authority (Dundalk Avenue) highway toll drawbridge across Bear Creek, mile 1.5, Sparrows Point, MD was replaced with a fixed bridge in 1998. Therefore, that portion of the operating regulation, as it pertains to the Dundalk Avenue highway toll drawbridge, is no longer applicable or necessary.

**DATES:** This rule is effective October 20, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0816 and are available by going to <http://www.regulations.gov>, inserting USCG–2011–0816 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, 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 Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail [Lindsey.R.Middleton@uscg.mil](mailto:Lindsey.R.Middleton@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary

to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Baltimore County Revenue Authority (Dundalk Avenue) highway toll draw bridge requiring draw operations, as specified in 33 CFR 117.543(a), was removed and replaced with a fixed bridge in 1998. That portion of the regulation has not been enforced since the replacement of the bridge, approximately thirteen years ago. The regulations governing the bridge, which is no longer a drawbridge, are no longer applicable and shall be removed from this section. It is unnecessary to publish an NPRM as this regulation cancels a regulation that has no further practical value. It is further unnecessary to publish an NPRM because operators transiting this portion of the waterway are aware that the bridge is now a fixed bridge. And, it is unnecessary to publish an NPRM because this regulation does not purport to place any restriction on mariners but rather removes a restriction that has no further applicability.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the Baltimore County Revenue Authority (Dundalk Avenue) highway toll draw operation requirements under 33 CFR 117.543(a), thus removing a regulatory restriction on the public. Additionally, 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**. The bridge has been a fixed bridge for the past 13 years; this rule merely requires an administrative change to the **Federal Register**, in order to omit a regulatory requirement that is no longer applicable or necessary.

#### **Basis and Purpose**

The drawbridge across Bear Creek, mile 1.5 was removed and replaced with a fixed bridge in 1998. Prior to 1998, a regulation was necessary to govern the operation of the openings of the drawbridge. After 1998, because the bridge can no longer be opened, there became no need for a regulation governing openings. It has come to the attention of the Coast Guard that the regulation was never updated subsequent to the completion of the fixed bridge. Therefore, this regulation seeks to alter the original regulation, to remove that portion which does not have present applicability due to the present capabilities of the bridge. The elimination of this drawbridge

necessitates the modification of the Baltimore County Revenue Authority (Dundalk Avenue) highway toll drawbridge operation regulation.

The regulation governing the operation of the bridge is found in 33 CFR 117.543(a). The purpose of this rule is to remove the portion of 33 CFR 117.543(a) that refers to the Baltimore County Revenue Authority (Dundalk Avenue) highway toll bridge at mile 1.5, from the Code of Federal Regulations since it governs a bridge that is no longer able to be opened.

The regulation found at 33 CFR 117.543 also governs the Peninsula Parkway Bridge, mile 2.1, and the Wise Avenue Bridge, mile 3.4. This Final Rule shall not alter the operating regulations in place at 33 CFR 117.543 for the Peninsula Parkway Bridge and the Wise Avenue Bridge. This rule shall only remove that verbiage regulating the Dundalk Avenue Bridge.

#### **Discussion of Rule**

The Coast Guard is changing the regulation in 33 CFR 117.543 by removing the restrictions and the regulatory burden related to the draw operations for this bridge which is no longer a drawbridge. The change removes the portion of the regulation governing the Baltimore County Revenue Authority (Dundalk Avenue) highway toll bridge because the bridge has been replaced with a fixed bridge. The replacement took place in 1998, approximately thirteen years ago. This Final Rule seeks to update the Code of Federal Regulations by removing language that regulates signaling and notice requirements for the opening of a bridge that, in fact, can no longer open. This change does not affect vessel operators using the waterway. This change does not affect nor does it alter those portions of 33 CFR 117.543 dealing with the Peninsula Parkway Bridge and the Wise Avenue Bridge.

#### **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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory 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.

The Coast Guard does not consider this rule to be “significant” under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. “Small entities” include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

Since this drawbridge has been removed and replaced with a fixed bridge, the regulation governing draw operations for this bridge is no longer needed. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities

#### **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 (adjusted for inflation) 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 cause 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. 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.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 this action is one of a category of actions which do 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 because this rule affects the promulgation of operating regulations or procedures for drawbridges.

**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. Revise paragraph (a) of § 117.543 to read as follows:

**§ 117.543 Bear Creek.**

(a) The draw of the Peninsula Parkway Bridge, mile 2.1, between Dundalk and Sparrows Point, shall open on signal; except that, from April 16 through November 15 from 12 midnight to 8 a.m. except Saturdays and Sundays, and Federal and State holidays, at least one half hour notice is required.

\* \* \* \* \*

October 5, 2011.

**William D. Lee,**  
Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG–2011–0962]

**Drawbridge Operation Regulation; Islais Creek, San Francisco, CA**

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Third Street Drawbridge across Islais Creek, mile 0.4, at San Francisco, CA. The deviation is necessary to allow the City of San Francisco to make emergency electrical repairs on the bridge. This deviation allows the bridge to be secured in the closed-to-navigation position during the deviation period.

**DATES:** This deviation is effective from 8 a.m. on October 3, 2011 to 6 p.m. on November 18, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–0962 and are available online by going to <http://www.regulations.gov>, inserting USCG–2011–0962 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, 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 David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail [David.H.Sulouff@uscg.mil](mailto:David.H.Sulouff@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The City of San Francisco requested a temporary change to the operation of the Third Street Drawbridge, mile 0.4, over Islais Creek, at San Francisco, CA. The drawbridge navigation span provides a vertical clearance of 4 feet above Mean High Water in the closed-to-navigation position. As required by 33 CFR 117.163(b), the draw shall open on signal if at least 72 hours advance notice is given to the San Francisco