

words “first sentence”, add the words “of the introductory text”.

#### § 2.97 [Corrected]

■ 6. On page 28605, in the third column, in the last line, add the words “of this section” after “and (d)(3)”.

■ 7. On page 28606, in the first column, the paragraph designations “(2)(A)” and “(B)” are corrected to read “(2)(i)” and “(ii)”, respectively.

#### § 2.208 [Corrected]

■ 8. On page 28606, in the second column, the paragraph designations “(A)” and “(B)” under paragraph (d)(1) are corrected to read “(i)” and “(ii)”, respectively.

Dated: June 19, 2009.

**Rockne Chickinell,**

*General Counsel, U.S. Parole Commission.*

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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:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is changing 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 interim rule is intended 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 interim rule is effective on June 24, 2009, and is applicable beginning June 13, 2009. Comments and related material must reach the Coast Guard on or before July 24, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2009-0202 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 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 four 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 Mr. Gary Kassof, Project Officer, First Coast Guard District, (212) 668-7165, [Gary.kassof@uscg.mil](mailto:Gary.kassof@uscg.mil). If you have questions on viewing 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-2009-0202), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material online, 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 deliver, 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>, select the Advanced Docket Search option on the right side of the screen, insert “USCG-2009-0202” in the Docket ID box, press Enter, and 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 this rule in view of them.

##### **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>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0202 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit 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 20590-0001, 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.

##### **Privacy Act**

Anyone can search the electronic form of all 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**.

##### **Regulatory Information**

The Coast Guard is issuing this interim 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)(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 substantive changes to the Drawbridge Operation Regulations implemented under this interim rule were previously tested successfully in a series of temporary deviations, with request for comment, issued by the Coast Guard. The most recent temporary deviation in effect from December 15, 2008 through June 12, 2009, will expire before a permanent rule change can be made utilizing the normal regulatory two step process of publishing a notice of proposed rulemaking with request for comment and a final rule. We are publishing this interim rule in order to make the successfully tested changes to the regulations effective the day after the existing temporary deviation expires on June 12, 2009.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists, for the same reasons discussed above, for making this rule effective less than 30 days after publication in the **Federal Register**.

### 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 existing drawbridge operating regulations listed at 33 CFR 117.747, require 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 are the only drawbridges operating under this regulation at present.

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 existing drawbridge operation regulations, as written, 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 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.

### Discussion of Proposed Rule

The Coast Guard is changing the drawbridge operation regulations listed at 33 CFR 117.747, and also to adding a new section 33 CFR 117.702, separating the listing for the Raritan River and Arthur Kill into two separate sections in the Code of Federal Regulations (CFR), since the only two moveable bridges listed under 33 CFR 117.747, 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 are not located near each other geographically and are on different waterways.

The New Jersey Transit (NJTRO) Railroad Bridge is the only drawbridge presently crossing the Raritan River.

Under 33 CFR 117.747 Raritan River, we will retain the morning and afternoon rush hour closures in the revised regulation but will eliminate all the redundant and obsolete language, such as the reference that public vessels be passed as soon as possible, which is now listed under 33 CFR 117.31, in this part. The language stating that the owners of each bridge shall maintain tugs at each drawbridge will also be removed since it is obsolete language and no longer necessary by present standards or for any known reason.

Under the new section, 33 CFR 117.702 Arthur Kill, we are listing the drawbridge operation regulations for the Arthur Kill (AK) Railroad Bridge, which was the subject of the three temporary test deviations previously discussed.

This interim rule for the Arthur Kill (AK) Railroad Bridge will require the Arthur Kill (AK) Railroad Bridge to remain in the open position at all times except during periods when it is closed for the passage of rail traffic. Conrail, the bridge operator, will maintain a dedicated telephone hot line at (973) 690-2454 for coordination of anticipated bridge closures.

Tide restrained deep draft vessels should call the hot line daily to advise of expected times of vessel transit through the bridge. The bridge may not close for the passage of trains during any high tide period once a deep draft tide restrained vessel notifies the bridge of its intent to transit through the bridge. High tide is considered by this rule to be from 2 hours before predicted high tide to a half hour after predicted high tide at The Battery, New York.

The bridge operator will issue a manual broadcast notice to mariners for a minimum range of 15 miles on VHF-FM channel 13 and 16, of its intent to close the bridge for a period of up to thirty minutes. The broadcast will occur at 90 minutes prior and again at 75 minutes prior to provide notice of a bridge closure.

Beginning at 60 minutes prior to a bridge closure automated or manual broadcasts will be repeated at 15-minute intervals and at 10 and 5 minutes prior to the bridge closure.

Two consecutive bridge closures are authorized each day to allow multiple train movements across the bridge. The closures will be fifteen minutes in duration and separated by a thirty-minute bridge open period.

Vessels will be required to plan their transits around the announced closure periods; however, a request for up to a 30-minute delay in the bridge closures to allow navigation to meet tide or current requirements would be granted if requested within 30 minutes after the initial broadcast notice to close the bridge is given. Requests received after the initial 30 minutes will not be granted.

In the event of bridge operational failure, the bridge operator must notify the Coast Guard Captain of the Port New York immediately and must dispatch a repair crew to the bridge 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 until the bridge has been restored to normal operations or the bridge must be raised and locked in the fully open position.

### Regulatory Analysis

We developed this interim 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 interim 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 have considered whether this rule will 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 section 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 marine and rail traffic will both be able to transit over and through the

Arthur Kill (AK) Railroad Bridge under a balanced and reasonable schedule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact, Commander (dpb), First Coast Guard District, Bridge Branch, One South Street, New York, NY 10004. The telephone number is (212) 668–7165. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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 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 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 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 paragraph (32)(e), of the Instruction, neither an environmental analysis checklist nor a categorical exclusion determination is required for this rule.

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

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard is amending 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 section 33 CFR 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) at 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 33 CFR 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: May 28, 2009.

**Dale G. Gabel,**

*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-2009-0439]

#### Drawbridge Operation Regulations; Cheesecake Creek, South Amboy, NJ, Public Event

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Route 35 Bridge across Cheesecake Creek, mile 0.0, at South Amboy, New Jersey. This deviation is necessary to facilitate the Rolling Thunder Freedom Ride. The deviation allows the bridge to remain in the closed position for one hour during a public event to facilitate public safety. **DATES:** This deviation is effective from 11:45 a.m. through 12:45 p.m. on September 20, 2009.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0439 and are available online by going to [www.regulations.gov](http://www.regulations.gov), selecting the