

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[Docket No. USCG-2008-0648]

RIN 1625-AA09

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

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is changing the operating regulation for the Illinois Street drawbridge, mile 0.3, and the 3rd Street drawbridge, mile 0.4, over Islais Creek to open on signal if at least 72 hours advance notice is given. This action is warranted due to the minimal amount of vessels requiring drawbridge openings on the waterway.

**DATES:** This rule is effective January 5, 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-2008-0648 and are available online at <http://www.regulations.gov>. This material is also available for inspection or copying at two locations: 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 and Commander (dpw), Eleventh Coast Guard District, Building 50-2, Coast Guard Island, Alameda, CA 94501-5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437-3516.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On July 24, 2008, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Islais Creek, San Francisco, CA in the **Federal Register** (73 FR 143). We received no public submissions on the proposed rule. No public meeting was requested, and none was held.

**Background and Purpose**

The Port of San Francisco as bridge owner requested a change in the operation regulation of the Illinois

Street drawbridge, mile 0.3, over Islais Creek, in the City and County of San Francisco, CA. The drawbridge is required to open on signal under 33 CFR 117.5. The drawbridge provides 5 feet of vertical clearance for vessels above Mean High Water (MHW) in the closed-to-navigation position and unlimited vertical clearance when open.

The San Francisco Department of Public Works owned, 3rd Street drawbridge, mile 0.4, over Islais Creek is required to open for vessels if at least one hour notice is given under 33 CFR 117.163. The drawbridge provides 4 feet of vertical clearance above MHW.

Islais Creek is one mile in length from its mouth to its navigable terminus, an outfall culvert. It is located in an industrial section of southeast San Francisco with no marinas on the waterway. There have been no requests for openings of the 3rd Street drawbridge and no complaints from waterway users since construction of the Illinois Street Drawbridge in 2003.

Due to infrequent calls for drawbridge openings, the San Francisco Department of Public Works requested at least 72 hours advance notice. This final rule will require both drawbridges to conform to the same 72 hour advance notification requirement, creating uniformity on the waterway and allowing bridge owners to manage their personnel more efficiently, while meeting the reasonable needs of navigation.

From 1990-2000, the existing 3rd Street drawbridge, mile 0.4, annually averaged 8 openings for state, federal, and local vessels, 2.3 openings for recreational vessels, and 1.3 openings for tugs and barges. There has been an average of 15.8 openings, including testing of the drawspan, per year, from 1990 to 2000. There are no marinas on the waterway and none are currently planned. The last commercial vessel to request a drawspan opening did so to remove an abandoned vessel from Islais Creek.

**Discussion of Comments and Changes**

This final rule amends the Illinois Street Drawbridge, mile 0.3, operation regulation from opening "on signal" to opening "on signal, if at least 72 hours advance notice is given." This final rule amends the 3rd Street Drawbridge, mile 0.4, operation regulation from opening "on signal, if at least one hour notice is given" to opening "on signal, if at least 72 hours advance notice is given." The Coast Guard did not receive any public submissions to the NPRM.

**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.

This rule is not a significant regulatory action because it will have little effect on the users of both the affected bridges and the waterway. There are no marinas on the waterway and none are currently planned. Vessel traffic has been minimal since 1990. Recreational vessels that transit close to the shoreline, i.e. kayaks, canoes, and other personal water craft can safely transit under these drawbridges at any time. Vessels which require a vertical clearance greater than four-feet at Mean High Water can schedule an opening.

**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.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. There are no marinas on the waterway and none are currently planned. Vessel traffic has been minimal since 1990. Recreational vessels that transit close to the shoreline, i.e. Kayaks, canoes, and other personal water craft can safely transit under these drawbridges at any time. Vessels which require an opening can schedule one.

**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.

#### 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 5100.1 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 there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

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; Department of Homeland Security Delegation No. 0170.1.

■ 2. § 117.163 Islais Creek (Channel) is revised to read as follows:

##### § 117.163 Islais Creek (Channel)

(a) The draw of the Illinois Street drawbridge, mile 0.3 at San Francisco, shall open on signal if at least 72 hours advance notice is given to the Port of San Francisco.

(b) The draw of the 3rd Street drawbridge, mile 0.4 at San Francisco, shall open on signal if at least 72 hours advance notice is given to the San Francisco Department of Public Works.

Dated: November 17, 2008.

**P.F. Zukunft,**

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

[FR Doc. E8–28809 Filed 12–4–08; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R01–OAR–2008–0194; A–1–FRL–8717–9]

#### Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Enhanced Vehicle Inspection and Maintenance Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a State Implementation Plan (SIP) revision submitted on December 19, 2007 by the State of Connecticut. This SIP revision includes regulations to update the enhanced motor vehicle inspection and maintenance (I/M) program in Connecticut. The revised program includes a test and repair network and on-board diagnostic (OBD2) testing for 1996 and newer vehicles. The intended effect of this action is to approve the