

apply if issued, as specified in § 519.16. Any such petition will be given full and prompt consideration by the proponent. If compatible with the orderly conduct of public business, the appropriate official may, at his discretion, allow the petitioner to appear in person for the purpose of supporting this petition. After consideration of all relevant matters by the proponent, the petitioner will be advised in writing by the proponent of the disposition of any petition, together with the reasons supporting that disposition. This provision does not apply to comments submitted on proposed rules in § 519.19.

**§ 519.22 Cases in which public comment is impractical.**

(a) Whenever a rulemaking proponent determines for good cause that inviting public comment regarding a proposed rule would be impractical, unnecessary, or contrary to the public interest, he will prepare a brief statement of the reasons supporting this determination for incorporation in the preamble to the adopted rule. The preamble and adopted rule will then be published as outlined in § 519.20(c) and (d).

(b) Alternatively, the proponent may request RMDA (AHRC-PDD-RP) (by letter) to adopt and publish in the **Federal Register** a separate rule exempting from the prepublication notice provisions of this regulation those specific categories of rules that the rulemaking proponent has determined that public comment would be unnecessary, impractical, or contrary to the public interest. The request to RMDA will contain an explanation of the reasons why the proponent believes that a particular category of rule or rules should not be published in proposed form for public comment and a legal review by the proponent's servicing legal office. If RMDA in coordination with the Office of Army General Counsel, agrees that public comment should not be invited with respect to the cited category, the proponent will adopt and publish a separate rule in the **Federal Register** exempting such rule or rules from the requirements of this part. This separate rule will include an explanation of the basis for exempting each particular category from the provisions of this part.

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BILLING CODE 3710-08-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD05-04-028]

RIN 1625-AA09

**Drawbridge Operation Regulation: Anacostia River, Washington, DC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations that govern the operation of the CSX Transportation (CSX) Railroad Bridge across Anacostia River, at mile 3.4, in Washington, DC. The final rule will eliminate the need for a bridge tender by allowing the bridge to be operated from a remote location. The final rule will maintain the bridge's current level of operational capabilities and continue to provide for the reasonable needs of rail transportation and vessel navigation.

**DATES:** This rule is effective September 7, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-04-028 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On May 17, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations: Anacostia River, Washington, DC" in the **Federal Register** (69 FR 27872). We received no comments on the proposed rule. No public hearing was requested nor held.

**Background and Purpose**

CSX, who owns and operates this movable (vertical lift-type) bridge, requested changes to the operating procedures for the drawbridge. The bridge has a vertical clearance in the closed position to vessels of eight feet at mean low water and five feet at mean high water. Currently, 33 CFR 117.253(b) requires the bridge to open on signal: at all times for public vessels

of the United States, state and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property; between 9 a.m. and 12 noon and between 1 p.m. and 6 p.m. from May 15 through September 30; between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the bridge tender not later than 6 p.m. on the day for which the opening is requested; and at all other times, if at least eight hours notice is given.

CSX proposes to remotely operate the opening and closing of the CSX Railroad Bridge across Anacostia River in Washington, DC, from the Benning Yard office, one mile away.

In the event of failure or obstruction of the motion sensors, laser scanners, video cameras or marine-radio communications, the CSX Railroad Bridge would not be operated from the remote location. In these situations, a bridge tender must be called and on-site within 30 minutes to operate the bridge.

When rail traffic has cleared, a horn will sound one prolonged blast followed by one short blast to indicate that the CSX Railroad Bridge is moving to the full open position to vessels. During open span movement, the channel traffic lights will flash red, until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green. Except as provided in 33 CFR 117.31(b), the opening of the draw to vessels will not exceed ten minutes after rail traffic has cleared the bridge.

During closing span movement, the channel traffic lights will flash red, the horn will sound five short blasts, and an audio voice-warning device will announce bridge movement. Five short blasts of the horn will continue until the bridge is seated and locked down. When the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red.

This change will save operational costs by eliminating bridge tenders, maintain the bridge's current level of operating capabilities and continue providing for the reasonable needs of rail transportation and vessel navigation.

**Discussion of Comments and Changes**

The Coast Guard received no comments on the NPRM for the CSX Railroad Bridge and no changes are being made to this final rule.

**Regulatory Evaluation**

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. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We reached this conclusion based on the fact that this final rule will have minimal impact on maritime traffic transiting the bridge. Although the CSX Railroad Bridge will be operated from a remote location, mariners can continue to their transits because all aspects of the current operating regulations remain essentially the same.

#### **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 final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The final rule will provide for the CSX Railroad Bridge to operate remotely and mariners will continue to plan their transits in accordance with the existing bridge operating regulations.

#### **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. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or option for compliance.

#### **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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. 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 considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

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

Bridges.

#### **Regulations**

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Amend § 117.253 by revising paragraph (b) to read as follows:

**§ 117.253 Anacostia River.**

\* \* \* \* \*

(b) The CSX Railroad Bridge, mile 3.4.  
(1) The draw of the bridge to be operated by the controller at the Benning Yard office shall open on signal:

(i) At all times for public vessels of the United States, state and local government vessels, commercial vessels and any vessels in an emergency involving danger to life or property.

(ii) Between 9 a.m. and 12 p.m. and between 1 p.m. and 6 p.m. from May 15 through September 30.

(iii) Between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the controller at the Benning Yard office not later than 6 p.m. on the day for which the opening is requested.

(iv) At all other times, if at least eight hours notice is given to the controller at the Benning Yard office.

(2) The CSX Railroad Bridge shall not be operated by the controller at the Benning Yard office in the event of failure or obstruction of the motion sensors, laser scanners, video cameras or marine-radio communications. In these situations, a bridge tender must be called to operate the bridge on-site.

(3) Except as provided in § 117.31(b), opening of the draw shall not exceed ten minutes after clearance of rail traffic.

(4) A horn will sound one prolonged blast followed by one short blast to indicate that the CSX Railroad Bridge is moving to the full open position for vessel traffic. During open span movement, the channel traffic lights will flash red until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green.

(5) A horn will sound five short blasts, the channel traffic lights will flash red, and an audio voice-warning device will announce bridge movement during closing span movement. Five short blasts of the horn will continue until the bridge is seated in and locked down. When the bridge is seated and in locked down position to vessels, the channel traffic lights will continue to flash red.

(6) The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gauges shall be placed on the bridge so that they are plainly visible to the operator of any vessel approaching the bridge from either upstream or downstream.

Dated: July 26, 2004.

**Sally Brice O'Hara,**

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

[FR Doc. 04-18017 Filed 8-5-04; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DC101-2029; FRL-7791-9]

### Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Update to Materials Incorporated by Reference

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by the District of Columbia that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

**DATES:** This action is effective August 6, 2004.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108 or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time

must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. In this action, EPA is doing the following:

1. Announcing the first update to the material being IBR'ed.

2. Adding a § 52.470(e) which summarizes the non-regulatory actions that EPA has taken on the District of Columbia SIP.

3. Making corrections to the chart listed in § 52.470(c), as described below:

a. District of Columbia Municipal Regulations (DCMR), Title 20—Environment. This title is added to the chart.

b. Chapter 1 (General), second entry for Section 199 (Definitions and Abbreviations)—In the "EPA Approval Date" column, the date format is revised from "May 9, 2001" to "5/9/01".

c. Chapter 2 (General and Non-attainment Area Permits), Section 204—The entry in the "Title/subject" column is revised.

d. Chapter 2, Section 8-2:720—The entry in the "State Citation" column is revised to read "Section 8-2:720(c)"; the entry in the "Comments" column is revised.

e. Chapter 4 (Ambient Monitoring, Emergency Procedures, Chemical Accident Prevention and Conformity), Section 400—The entry in the "Title/subject" column is revised.

f. Chapter 5 (Source Monitoring and Testing), Section 500—The entries in the "Title/subject" column are revised to read "Records and Reports".

g. Chapter 5, Section 502.18—In the "EPA Approval Date" column, the date format is revised from "May 9, 2001" to "5/9/01"; the text in the "Additional Information" column is removed.

h. Chapter 7 (Volatile Organic Compounds), all entries except for Section 710—In the "EPA Approval Date" column, the **Federal Register** page citation is revised to read "64 FR 57777".

i. Chapter 7, Section 701.1 through 701.3—In the "State citation" column, "701.3" is revised to read "703.13".