

Based on the conclusion that there was no scientific or technical basis provided for establishing a rational connection between the angle of draw and surface area damage, the Court further concluded that the rebuttable presumption failed. In reviewing the rebuttable presumption requirement, the Court held "an evidentiary presumption is 'only permissible if there is sound and rational connection between the proved and inferred facts, and when proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact \* \* \* until the adversary disproves it.'" That is to say, for the presumption to be permissible, the facts would have to demonstrate that the earth movement from the underground mining operation "more likely than not" caused the damage at the surface. See *National Mining Association*, 173 F.3d at 906–910.

In compliance with the Court of Appeals' decision of April 27, 1999, we are suspending 30 CFR 817.121(c)(4)(i) through (iv).

Paragraph (v) within this section applies generally to the types of information that must be considered in determining the cause of damage to an EPOA protected structure and is not limited to or expanded by the area defined by the angle of draw. Therefore, paragraph (v) will remain in force.

## 2. Section 784.20(a)(3)

This regulatory provision required, unless the applicant was denied access for such purposes by the owner, a survey which identified certain features. First, the survey had to identify the condition of all non-commercial buildings or occupied residential dwellings and related structures which were within the area encompassed by the applicable angle of draw and which might sustain material damage, or whose reasonably foreseeable use might be diminished, as a result of mine subsidence. Second, the survey had to identify the quantity and quality of all drinking, domestic, and residential water supplies within the proposed permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. In addition, the applicant was required to notify the owner in writing that denial of access would remove the rebuttable presumption that subsidence from the operation caused any postmining damage to protected structures that occurred within the surface area that corresponded to the angle of draw for the operation. (See discussion of angle of draw above).

This regulatory provision was challenged insofar as it required a specific structural condition survey of all EPOA protected structures. The Court of Appeals vacated the specific structural condition survey regulatory requirement in its decision on April 27, 1999. In reviewing the Secretary's requirement, the Court clearly upheld the Secretary's authority to require a pre-subsidence structural condition survey of all EPOA protected structures. The Court accepted the Secretary's explanation that this specific structural condition survey was necessary, among other requirements, in order to determine whether a subsidence control plan would be required for the mining operation. However, because of the Court's ruling on the "angle of draw" regulation discussed above, it vacated the requirement for a specific structural condition survey because it was tied directly to the area defined by the "angle of draw".

In compliance with the Court of Appeals' decision, we are suspending that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all EPOA protected structures. The remainder of this section continues in force to the extent that it applies to the EPOA protected water supplies survey and any technical assessments or engineering evaluations necessarily related thereto.

## V. Procedural Matters

### 1. National Environmental Policy Act

This notice suspends those sections of the March 31, 1995, final rule invalidated by the U.S. Court of Appeals for the District of Columbia Circuit. The action is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969, as amended 42 U.S.C. 4332 *et seq.* This determination is made in accordance with the Departmental Manual (516 DM 2, Appendix 1.10).

### 2. Author

The author of this suspension notice is Vermell Davis, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

### List of Subjects

#### 30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

#### 30 CFR Part 817

Environmental Protection, Reporting and recordkeeping requirements, Underground mining.

Dated: December 7, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, we are suspending portions of 30 CFR Parts 784 and 817 as set forth below:

### PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for Part 784 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*, as amended; and 16 U.S.C. 470 *et seq.*

2. In § 784.20, paragraph (a)(3) is amended by adding a sentence at the end, reading as follows:

#### § 784.20 Subsidence control plan.

(a) \* \* \*

(3) \* \* \* However, the requirements to perform a survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the areas encompassed by the applicable angle of draw is suspended per court order.

\* \* \* \* \*

### PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. The authority citation for Part 817 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*, as amended.

#### § 817.121—[Suspended in part]

4. In § 817.121, paragraphs (c)(4)(i) through (iv) are suspended.

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD01–99–075]

RIN 2115–AE47

Drawbridge Operation Regulations: Navesink River, NJ

AGENCY: Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operation regulations governing the Oceanic Bridge, at mile 4.5, across the Navesink River at Locust Point, New Jersey. The bridge owner has asked the Coast Guard to change the regulations to require a twenty-four hour advance notice for bridge openings from December through March because there have been few requests to open the bridge during the winter months. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

**DATES:** This rule is effective January 21, 2000.

**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 (CGD01-99-075) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On September 1, 1999, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Navasink River, New Jersey, in the **Federal Register** (64 FR 47751). We received no comments in

response to the notice of proposed rulemaking. No public hearing was requested and none was held.

**Background and Purpose**

The Oceanic Bridge at mile 4.5 across the Navesink River at Locust Point, New Jersey, has a vertical clearance of 22 feet at mean high water and 25 feet at mean low water. The existing operating regulations for the Oceanic Bridge require the bridge to open on signal at all times.

The bridge owner, the County of Monmouth, asked the Coast Guard to change the regulations for the bridge and submitted bridge opening log data for the Coast Guard to evaluate.

The log data indicated the following number of openings:

	1994	1995	1996	1997	1998
December .....	4	12	9	6	8
January .....	1	1	14	2	6
February .....	1	1	0	1	10
March .....	11	13	4	6	13

The bridge owner asked the Coast Guard to change the regulations to require a twenty-four hour advance notice for openings from December through March. The bridge opening log data shows that during this time period there have been few requests to open the bridge. The Coast Guard believes the bridge owner's request to not crew the bridge during the winter months and the twenty-four hour advance notice requirement are reasonable based upon the low number of bridge openings during that time period.

**Discussion of Comments and Changes**

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge has not had many requests to open during the winter months. Mariners will still be able to obtain bridge openings during the winter

months provided they give twenty-four hours notice.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612) we 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 less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, 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.

**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**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs

the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard considered the environmental impact of this rule and

concluded that under figure 2-1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

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

Bridges.

#### Regulations

For the reasons set out 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; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.734 is revised to read as follows:

#### § 117.734 Navesink River (Swimming River).

The Oceanic Bridge, mile 4.5, shall open on signal; except that, from December 1 through March 31, the draw shall open on signal, if at least a twenty-four hour notice is given by calling the number posted at the bridge. The owner of this bridge shall provide and keep in good legible condition clearance gauges with figures not less than eight inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Dated: December 8, 1999.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard.*

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#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

[CGD01-99-150]

RIN 2115-AE84

#### Regulated Navigation Area; Arrival Notification and Year 2000 (Y2K) Reporting Requirements for Vessels Transiting the Cape Cod Canal

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area for U.S. and foreign flag vessels transiting the Cape Cod Canal during the peak Y2K risk periods of December 30, 1999 to January 1, 2000 and February 27, 2000 to February 29, 2000. Owners and operators of U.S. vessels transiting the Cape Cod Canal during these periods will be required to notify the Captain of the Port, Marine Safety Office Providence RI, (hereinafter COTP Providence RI) 24 hours in advance of their transit. Owners and operators of foreign vessels will be required to notify and report Year 2000 (Y2K) preparedness information to the COTP Providence, RI 24 hours in advance of transiting the Cape Cod Canal. The advance notice and Y2K information will allow the COTP Providence, RI to assess vessel preparedness for potential Y2K-related malfunctions of equipment and systems and enable appropriate measures to be taken to protect the Cape Cod Canal from a serious marine casualty.

**DATES:** This temporary rule is effective from December 22, 1999 and expires on March 1, 2000. Comments must reach the addresses below on or before January 21, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 22, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to Commander, First Coast Guard District (m), 408 Atlantic Avenue, Boston, Massachusetts, 02210.

(2) By hand to room 632 on the 6th floor at the address listed above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223-8334.

(3) By fax to the Docket Manager at 617-223-8904.

Commander, First Coast Guard District (m) maintains the public docket for this rulemaking. Comments and related material, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 632 on the 6th floor at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Dennis O'Mara, Marine Safety Division, First Coast Guard District, 617-223-8334.

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD1-99-150), 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 by mail, hand or fax, to the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand, 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 they were received, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard encourages you to file any important comments as quickly as possible. We will consider all comments and material received during the comment period and may change this rule, if necessary, in response to the comments.

#### Regulatory Information

Due to the unique nature of the Y2K problem, this rule is being made effective on the date of publication. It will have considerable positive impact on marine safety and environmental protection in the Cape Cod Canal by establishing a reporting requirement for vessels transiting the Cape Cod Canal during the peak Y2K risk periods of midnight December 30, 1999 to midnight January 1, 2000 and midnight February 27, 2000 to midnight February 29, 2000. The Cape Cod Canal is administered by the Army Corps of Engineers. There is presently no regulation requiring either a U.S. or a foreign flag vessel planning on transiting the Cape Cod Canal to notify either the Army Corps of Engineers or the Coast Guard prior to arrival at the eastern or western entrance to the Cape Cod Canal. Therefore, without this rule, the COTP Providence, RI would not be able to assess a vessel's Y2K compliance prior to the vessel arriving at the entrance of the Cape Cod Canal. Vessels could experience delay while the COTP Providence, RI determines whether the vessel should transit the Cape Cod Canal. This rule will facilitate the movement of vessels through the Cape Cod Canal during the peak Y2K risk periods by allowing the COTP Providence, RI to determine a vessel's Y2K compliance status prior to its arrival at the entrance to the Cape Cod