

backpay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint.

(f) Paragraphs (a) and (b) of this section apply to all cases in which the decision of the ALJ was issued on or after August 31, 2010.

### Subpart C—Miscellaneous Provisions

#### **§ 1978.111 Withdrawal of STAA complaints, findings, objections, and petitions for review; settlement.**

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by notifying the Assistant Secretary, orally or in writing, of his or her withdrawal. The Assistant Secretary then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. The Assistant Secretary will notify the parties (and each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw the findings and/or preliminary order at any time before the expiration of the 30-day objection period described in § 1978.106, provided that no objection has been filed yet, and substitute new findings and/or a new preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or preliminary order become final, a party may withdraw objections to the Assistant Secretary's findings and/or preliminary order by filing a written withdrawal with the ALJ. If a case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's

findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a STAA complaint and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant, and the respondent agree to a settlement. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates the Assistant Secretary's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ or by the ARB, if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to 49 U.S.C. 31105(e).

#### **§ 1978.112 Judicial review.**

(a) Within 60 days after the issuance of a final order under §§ 1978.109 and 1978.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

#### **§ 1978.113 Judicial enforcement.**

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order, including one approving a settlement agreement issued under STAA, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

#### **§ 1978.114 District court jurisdiction of retaliation complaints under STAA.**

(a) If there is no final order of the Secretary, 210 days have passed since the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. The action shall, at the request of either party to such action, be tried by the court with a jury.

(b) Within seven days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

#### **§ 1978.115 Special circumstances; waiver of rules.**

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders as justice or the administration of STAA requires.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2012-0692]

#### Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Fleet Feet Event, Run to Remember 10K. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

**DATES:** This deviation is effective from 9:30 a.m. to 10:30 a.m. on September 9, 2012.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2012-0692 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0692 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 email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, email [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 California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 9:30 a.m. to 10:30 a.m. on September 9, 2012 to allow the community to participate in the Fleet Feet Event, Run To Remember 10K. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were

raised. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened with 15 minutes advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 17, 2012.

**D.H. Sulouff,**

*District Bridge Chief, Eleventh Coast Guard District.*

[FR Doc. 2012-18342 Filed 7-26-12; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2011-1109]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Sturgeon Bay Ship Canal, Sturgeon Bay, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operating schedule for the Maple-Oregon and Michigan Street Bridges across the Sturgeon Bay Ship Canal, at miles 4.17 and 4.3, in Sturgeon Bay, Wisconsin. The establishment of this schedule is necessary due to the construction of the Maple-Oregon Street Bridge and the completed rehabilitation of the Michigan Street Bridge. This final rule also confirms the winter drawbridge schedules for all three drawbridges over Sturgeon Bay Ship Canal, including the two previously mentioned bridges as well as the Bayview Bridge at mile 3.0.

**DATES:** This rule is effective August 27, 2012.

**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-2011-1109 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1109 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 email Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard, telephone 216-902-6085, email [lee.d.soule@uscg.mil](mailto:lee.d.soule@uscg.mil), or fax 216-902-6088. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### A. Regulatory History and Information

On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Sturgeon Bay Ship Canal, Sturgeon Bay, WI, in the **Federal Register** (77 FR 21890). We did not receive any comments on the proposed rule. No public meeting was requested, and none was held.

##### B. Basis and Purpose

This rule establishes drawbridge schedules following the construction of the new Maple-Oregon Street Bridge and the extensive rehabilitation of the existing Michigan Street Bridge. This final rule is expected to provide for the safe and efficient passage of vessels requiring drawbridge openings, as well as the efficient movement of vehicular traffic in Sturgeon Bay.

The Sturgeon Bay Ship Canal is approximately 8.6 miles long and provides a navigable connection between Lake Michigan and Green Bay. The area experiences a significant increase in vehicular and vessel traffic during the peak tourist and navigation season between Memorial Day and Labor Day each year. There are a total of three highway drawbridges across the waterway. The Michigan Street Bridge provides unlimited vertical clearance in the open position and 14 feet in the closed position. Maple-Oregon Bridge provides unlimited vertical clearance in the open position and 25 feet in the closed position. Bayview Bridge also provides unlimited vertical clearance in the open position and 42 feet in the closed position. Both Michigan Street and Maple-Oregon Bridges serve the downtown Sturgeon Bay area and are located approximately 750 feet apart on the canal.

A final rule was published on October 24, 2005 in the **Federal Register** (70 FR 61380) to allow for one opening per hour at the Michigan Street Bridge for recreational vessels while the Maple-Oregon Bridge was constructed and the Michigan Street Bridge was