(2) *Payment for internal revenue stamps.* The director may accept checks, drafts, and money orders described in paragraph (a)(1) of this section in payment for internal revenue stamps. However, the director may refuse to accept any personal check whenever he or she has good reason to believe that such check will not be honored upon presentment.

(b) *Checks or money orders not paid*—(1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check or draft) or money order in payment for taxes or stamps is not released from his or her liability until the check, draft, or money order is paid; and, if the check, draft, or money order is not duly paid, the person shall also be liable for all legal penalties and additions, to the same extent as if such check, draft, or money order had not been tendered.

(2) *Liability of financial institutions and others.* If any certified, treasurer's, or cashier's check, or other guaranteed draft, or money order, is not duly paid, the United States shall have a lien for the amount of such check or draft upon all assets of the financial institution on which drawn, or for the amount of such money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such financial institution or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such financial institution. In addition, the Government has the right to exact payment from the person required to make the payment.

* * * * *

(d) *Financial institution.* For purposes of section 6311 and this section, *financial institution* includes but is not limited to—

(1) A bank or trust company (as defined in section 581);

(2) A domestic building and loan association (as defined in section 7701(a)(19));

(3) A mutual savings bank (including but not limited to a mutual savings bank as defined in section 591(b));

(4) A credit union (including both state and federal credit unions, and including but not limited to a credit union as defined in section 501(c)(14)); and

(5) A regulated investment company (as defined in section 851(a)).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: April 5, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–10410 Filed 4–27–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 4 and 116

[CGD 91–063]

RIN 2115–AE15

Alteration of Obstructive Bridges

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations which set out and describe the procedures for determining whether a bridge unreasonably obstructs the free navigation of navigable waters of the United States and, if it does, the procedures for ordering its alteration under the Truman-Hobbs Act, the Bridge Act of 1906, or the Rivers and Harbors Appropriation Act of 1899. The amendments clarify and provide additional details to the description of these procedures.

DATES: This rule becomes effective on May 30, 1995.

ADDRESSES: Documents referenced in this preamble are available for inspection and copying at the office of the Executive Secretary, Marine Safety Council, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, Room 3406, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477 for more information.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Tyssens, Alterations, Drawbridges, and Systems Branch (G-NBR–1), at (202) 267–0376.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Larry R. Tyssens, Project Manager, Office of Navigation Safety and Waterway Services, and LT Rachel Goldberg, Project Counsel, Office of the Chief Counsel.

Regulatory History

On March 22, 1994, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Alteration of Obstructive Bridges'' in the **Federal Register** (59 FR 13588). Opportunity for comment on the proposal was provided until May 23, 1994.

Discussion of Comments and Changes

Four letters were received in response to the NPRM. Two of the comments were submitted by railroad trade associations, one by a private individual, and one comment was from the U.S. Department of Interior.

The Department of Interior reminded the Coast Guard that in the process of ordering the alteration of unreasonably obstructive bridges, the Coast Guard must comply with the requirements of section 4(f) of the Department of Transportation Act and section 106 of the National Historic Preservation Act. Interior also commented that the Coast Guard should take into consideration the implementation of section 147 of the Federal Aid Highway Act of 1976 (Pub. L. 94–280). Section 4(f) of the Department of Transportation Act ensures that Department of Transportation agencies, including the Coast Guard, make a special effort to preserve the natural beauty of public lands and parks. The act includes a requirement for an agency determination that every project undertaken does not adversely impact these lands unless no feasible alternative exists and that any harm which may result is minimized. The Coast Guard has procedures to ensure compliance with this requirement. Internal Coast Guard instructions, found in Chapter 2 of the *Bridge Administration Manual* (COMDTINST M16590.5A), detail the procedures to be followed by a District Commander to determine if a bridge alteration will result in any impact on 4(f) property and, if such impact is anticipated, procedures for evaluating the planned impact and consideration of alternatives.

Section 106 of the National Historic Preservation Act (16 U.S.C. 470) requires that Federal agencies identify and help preserve historic and cultural resources. To meet this requirement, internal Coast Guard instructions, also detailed in Chapter 2 of the *Bridge Administration Manual*, require a Coast Guard official to review the National Register of Historic Places to determine if any listed properties are within one-half mile of an alteration project. If there are any listed properties in the area, the Coast Guard must document any effects on such property and prepare an Environmental Impact Statement if one is warranted. In the development of any

bridge project, the Coast Guard also works closely with state and national agencies with expertise in historic resources. In addition, if an alteration project will affect Indian lands, the Coast Guard will invite the governing body of the Indian tribe to be a consulting party and to concur in any decision.

In regard to Interior's suggestion as to the implementation of Section 147 of the Federal Aid Highway Act of 1976 (Pub. L. 94–280), the Coast Guard has a memorandum of understanding with the Federal Highway Administration (FHWA) concerning the preparation of environmental documents. Through this agreement, the Coast Guard and the FHWA have agreed that when a highway section requires an action by both FHWA and Coast Guard, the FHWA will normally serve as the lead agency for the preparation and processing of environmental documents.

A comment was received from a publisher of marine education textbooks who objected to proposed § 116.10 on the grounds that it is permissive in nature and fails to require the District Commander to review files, or to conduct an investigation relative to a formal complaint that a bridge unreasonably obstructs navigation. Coast Guard policy is to place requirements on its District Commanders in internal directives, such as Commandant Instructions and program manuals, and not in the Code of Federal Regulations. The procedures for the District Commander's Preliminary Review of a written complaint, including a mandatory requirement that a District Commander conduct a Preliminary Review any time a written complaint is received, are contained in Chapter 6 of the *Bridge Administration Manual*. Section 116.10 of the final rule now describes the procedures a District Commander will use to review any written complaint received about a bridge.

Two comments were also received from railroad trade associations. One of the association's member railroads operates 75 percent of the line-haul mileage, employs 89 percent of the workers, accounts for 91 percent of the freight revenue of all railroads in the United States, and operates almost all of the nation's inter-city passenger trains. The other is a national association of railroad professionals involved in the construction and maintenance of railroad bridges. Both of these comments objected to the omission in the proposed rule of language, found in the bridge statutes and the previous codification of part 116, that the Coast Guard consider the needs of rail and highway traffic, as well as the needs of navigation, in determining what alterations to a bridge must be undertaken by the bridge owner. The Coast Guard agrees with the comments. This language appears in the final rule in § 116.01(e)(1).

The comment from the trade association representing railroad professionals involved in the construction and maintenance of railroad bridges also expressed concern with the language of proposed § 116.20(b). The association raised the issue of the railroad bridge owner's responsibility to totally fund alterations if the railroad bridge does not meet the benefit/cost ratio criteria used to determine eligibility for funding under the Truman-Hobbs Act. Using a benefit/cost ratio to determine eligibility for Truman-Hobbs funding and as justification before Congress for this funding is not new. It is contained in the *Bridge Administration Manual* and is now being mentioned in 33 CFR 116.30 for purposes of clarification. Before a bridge alteration is ordered and funded under the Truman-Hobbs Act, a thorough study and analysis relevant to the unreasonableness of the bridge in question must be undertaken. The study must clearly demonstrate that the navigational benefits which would accrue as a result of the alteration would at least equal the cost of the alteration and, therefore, warrant such a public expenditure for an Order to Alter to be issued. If a bridge falling under the auspices of the Truman-Hobbs Act is statutorily declared to be an unreasonable obstruction to navigation, an Order to Alter will be issued whether the bridge meets the benefit/cost ratio criteria or not. The United States will pay a proportionate share of the cost of the alterations.

The Coast Guard is also making a number of changes in wording to the final rule as a result of its internal review and input from the bridge program's field and Headquarters personnel in response to the NPRM. These changes are not substantive. They merely clarify, reword, and provide additional details of the Coast Guard's procedures and are discussed below.

Section 116.01 has been expanded from the NPRM to provide an introduction and overview of the process the Coast Guard uses to determine whether a bridge is an unreasonable obstruction to navigation and, if it is, the process leading up to the issuance of an Order to Alter. The differences in the process between railroad or publicly owned highway bridges which are covered by the Truman-Hobbs Act (33 U.S.C. 511 *et. seq.*), and all other bridges are highlighted. Additionally, the note referring the public to chapter 6 of the *Bridge Administration Manual*, COMDTINST M16590.5A, has been deleted.

The contents of proposed § 116.05 remains the same, but the section was reworded to make it clear that the Coast Guard only has authority to alter bridges over navigable waters of the United States.

The subject matter discussed in proposed § 116.10, *Preliminary Review*, has been separated into two separate sections in the final rule, § 116.10 *Preliminary Review*, and § 116.15 *Preliminary Investigation*. Section 116.10 of the final rule now discusses in greater detail the type of information used, and procedures followed, by a District Commander during the Preliminary Review stage. Section 116.15 of the final rule now more clearly sets out the type of information which will be gathered by the District Commander during a Preliminary Investigation as well as the procedures used to decide whether the investigation goes forward.

A new § 116.20, *Detailed Investigation*, has been added to the final rule to explain this phase of a Coast Guard investigation conducted by a District Commander. This section sets out the type of information examined at the Detailed Investigation stage and procedures followed to determine if an Order to Alter should be issued. The section expands upon the more general guidance which was contained in paragraph (a) of proposed § 116.25.

Proposed § 116.15, *Public hearings*, has been expanded to provide greater detail concerning the public hearing and appears in the final rule as § 116.25. This section now clearly states that a public hearing takes place both as part of an internal Coast Guard investigation to determine if a bridge unreasonably obstructs navigation, and when there has been a Congressional determination that a bridge is unreasonably obstructive, to determine what alterations to the bridge are necessary.

A new § 116.30, *Chief, Bridge Administration Division Review and Evaluation*, has also been added to describe the information used by the Chief, Bridge Administration Division in making a final determination of whether a bridge unreasonably obstructs navigation and, if so (or in the case of a bridge declared unreasonably obstructive by Congress), what alterations will be required. Language from proposed § 116.20, discussing the navigational benefit/cost ratio prepared by the Coast Guard, has been

incorporated into this section. This benefit/cost ratio is calculated to document the economic feasibility of an alteration under the Truman-Hobbs Act. The section also includes information about the ''60-Day Letter'' the Coast Guard issues to provide notice and opportunity for a bridge owner to request reevaluation, prior to the issuance of an Order to Alter, of the determination that a bridge is an unreasonable obstruction to navigation or of the required alterations to the bridge.

The Order to Alter which was discussed in the NPRM in proposed § 116.25 is discussed in the final rule in § 116.35. As a result of this change, paragraphs (b) and (d) of proposed § 116.25 are in § 116.35 of the final rule. Paragraph (c) of proposed § 116.25, which discussed service of the Order to Alter has been deleted as unnecessary. No special service procedures are needed. The requirements for an equitable contribution for alterations with non-navigational effects as a prerequisite to the issuance of an Order to Alter, which in the proposed rule was in the section concerning apportionment of costs, proposed § 116.35, has been moved to paragraph (c) of § 116.35 in the final rule as well.

Minor editorial changes were made to proposed § 116.30, *Plans and specifications,* which has been renumbered as § 116.40 in the final rule; proposed § 116.35, *Apportionment of cost under the Truman-Hobbs Act,* which has been renumbered as § 116.50; and proposed § 116.40, *Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible to be altered under the Truman-Hobbs Act,* which has been renumbered as § 116.45 in the final rule. These sections have been reworded and renumbered to clarify that the procedures in these sections only apply to bridges being altered under the Truman-Hobbs Act. The order of the sections describing the apportionment of costs and submission of bids, proposed § 116.35 and § 116.40, respectively, was changed to properly reflect the order of events during a bridge alteration project.

Proposed § 116.45, *Appeals,* now appears as § 116.55 with the clarification that the decision to issue an Order to Alter can not be appealed through the administrative process. This clarification was made because issuing the Order constitutes final agency action.

Regulatory Evaluation

This final 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. It has not been reviewed by the Office of Management and Budget under that order. It is not significantunder the ''Department of Transportation Regulatory Policies and Procedures'' (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures is unnecessary. This rulemaking is intended to revise the regulations which describe the administrative process used to declare and order the alteration of unreasonably obstructive bridges. There is no new expense to the general public. On average, the Coast Guard orders one bridge to be altered under the Truman-Hobbs Act a year, and orders one alteration of a bridge under the Bridge Act of 1906 every thirty years.

Small Entities

This rulemaking is intended to clarify the circumstances under which a bridge may be declared unreasonably obstructive and the procedures taken to affect changes allowing the reasonably unimpeded passage of navigation. It imposes no special expense on small entities. Small entities may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Therefore, because it expects the economic impact of this final rule to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) that this will not have a significant economic impact on a substantial number of small entities. On average, the Coast Guard orders one bridge to be altered under the Truman-Hobbs Act a year, and orders one alteration of a bridge under the Bridge Act of 1906 every thirty years.

Collection of Information

This rule contains collection of information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), and OMB approved them. The part number is part 116, and the corresponding OMB approval number is OMB Control Number 2115–0614.

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this final rule is categorically excluded from further environmental documentation because it is a Bridge Administration Program action involving the promulgation of procedures, process, and guidance for alteration of unreasonably obstructive bridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 4

Coast Guard, Reporting requirements.

33 CFR Part 116

Bridges, Coast Guard.

For the reasons set out in the preamble, the Coast Guard is amending parts 4 and 116 of Title 33, Code of Federal Regulations, as follows:

PART 4—[AMENDED]

1. The authority citation for part 4 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

2. The table in § 4.02 is amended by adding, in the appropriate columns, between the entries for ''Part 115'' and ''Part 125'', an entry for Part 116 to read as follows:

§ 4.02 Display.

33 CFR part or section where identified and described	Current OMB control No.
* * * * *	
Part 116	2115–0614
* * * * *	

3. Part 116 is revised to read as follows:

PART 116—ALTERATION OF UNREASONABLY OBSTRUCTIVE BRIDGES

Sec.
116.01 General.
116.05 Complaints.
116.10 Preliminary review.

116.15 Preliminary investigation.
116.20 Detailed investigation.
116.25 Public hearings.
116.30 Chief, Bridge Administration Division review and evaluation.
116.35 Order to Alter.
116.40 Plans and specifications under the Truman-Hobbs Act.
116.45 Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible for funding under the Truman-Hobbs Act.
116.50 Apportionment of costs under the Truman-Hobbs Act.
116.55 Appeals.

Authority: 33 U.S.C. 401, 521; 49 U.S.C. 1655(g); 49 CFR 1.4, 1.46(c).

§ 116.01 General.

(a) All bridges are obstructions to navigation and are tolerated only as long as they serve the needs of land transportation while allowing for the reasonable needs of navigation.

(b) This part describes the general procedures by which the U.S. Coast Guard determines a bridge to be an unreasonable obstruction to navigation and issues an Order to Alter under the authority of the following statutes, as appropriate: Section 18 of the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. 502; Section 4 of the Bridge Act of 1906, 33 U.S.C. 494; or the Truman-Hobbs Act of 1940, as amended, 33 U.S.C. 511–524.

(c) A bridge constructed across a navigable water of the United States shall not unreasonably obstruct the free navigation of the water over which it was constructed, either due to insufficient height or width of the navigation span, or because of difficulty in passing through the draw opening. If any bridge unreasonably obstructs navigation, the Commandant, U.S. Coast Guard, will order the alteration of that bridge. Alterations may include structural changes, replacement, or removal of the bridge.

(d) Whenever the Coast Guard has good reason to believe that a bridge across any of the navigable waters of the United States is an unreasonable obstruction to navigation, the Coast Guard will give notice to the owner of the bridge and other interested parties, and hold a public hearing at which the interested parties will have a full opportunity to be heard and to offer evidence on the question of whether alterations to the bridge are necessary and, if so, the extent of alterations needed.

(e) If the Coast Guard determines that alterations to a bridge are necessary, the Commandant, U.S. Coast Guard, will issue to the bridge owner an Order to Alter containing details of the alterations necessary to render navigation through or under the bridge reasonably free, easy, and unobstructed.

(1) In the case of a railroad or publicly owned highway bridge, an Order to Alter is issued to the bridge owner under the provisions of the Truman-Hobbs Act (33 U.S.C. 511 *et seq.*). In ordering these alterations, the Coast Guard will give due regard to the necessities of free and unobstructed navigation and of rail and highway traffic. For alterations to bridges governed by the Truman-Hobbs Act, the Coast Guard must approve general plans, specifications, and contracts for the alteration project, as well as approving the apportionment of the total cost of the alterations between the United States and the bridge owner.

(2) For all other bridges, the Order to Alter will contain the required alterations for the bridge and will prescribe a reasonable time in which to accomplish the required alterations. The bridge owner is responsible for the entire cost of the required alterations.

§ 116.05 Complaints.

Any person, company, or other entity may submit to the District Commander of the Coast Guard district in which a bridge over a navigable water of the United States is located, a complaint that a bridge unreasonably obstructs navigation. The complaint must be in writing and include specific details to support the allegation.

§ 116.10 Preliminary review.

(a) Upon receipt of a written complaint, the District Commander will review the complaint to determine if, in the District Commander's opinion, the complaint is justified and whether a Preliminary Investigation is warranted.

(1) The District Commander's opinion as to whether or not the complaint warrants a Preliminary Investigation will be formed through informal discussions with the complainant, users of the affected waterway, the owner of the bridge, and other interested parties.

(2) In forming an opinion, the District Commander may also review the district files, records of accidents, and details of any additional written complaints associated with the bridge in question.

(b) In the absence of any written complaint, the District Commander may decide, based on a bridge's accident history or other criteria, to conduct a Preliminary Investigation.

(c) The District Commander will inform the complainant and the Chief, Bridge Administration Division of the determination of any Preliminary Review. If the District Commander decides that the bridge in question is not an unreasonable obstruction to navigation, the complainant will be provided with a brief summary of the information on which the District Commander based the decision and will be informed of the appeal process described in § 116.55. There will be no further investigation, unless additional information warrants a continuance or reopening of the case.

§ 116.15 Preliminary investigation.

(a) During the Preliminary Investigation, the District Commander will prepare a written report containing all pertinent information and submit the report, together with a recommendation for or against the necessity of a Detailed Investigation, to the Chief, Bridge Administration Division.

(b) The Preliminary Investigation Report will include a description of the nature and extent of the obstruction, the alterations to the bridge believed necessary to meet the reasonable needs of existing and future navigation, the type and volume of waterway traffic, and a calculation of the benefits to navigation which would result from the proposed bridge alterations.

(c) The Chief, Bridge Administration Division will review the Preliminary Investigation Report and make a Preliminary Decision whether or not to undertake a Detailed Investigation and a Public Hearing.

(d) If after reviewing the Preliminary Investigation Report, the Chief, Bridge Administration Division decides that further investigation is not warranted, the complainant will be notified of the decision. This notification will include a brief summary of information on which the decision was based and details of the appeal process described in § 116.55.

§ 116.20 Detailed investigation.

(a) When the Chief, Bridge Administration Division determines that a Detailed Investigation should be conducted, the District Commander will initiate an investigation that addresses all of the pertinent data regarding the bridge, including information obtained at a public hearing held under § 116.25. As part of the investigation, the District Commander will develop a comprehensive report, termed the ''Detailed Investigation Report'', which will discuss: the obstructive character of the bridge in question; the impact of that bridge upon navigation; navigational benefits derived; whether an alteration is needed to meet the needs of navigation; and, if alteration is recommended, what type.

(b) The District Commander will forward the completed Detailed Investigation Report to the Chief, Bridge

Administration Division for review together with a recommendation of whether the bridge should be declared an unreasonable obstruction to navigation and, if so, whether an Order to Alter should be issued.

§ 116.25 Public hearings.

(a) Any time the Chief, Bridge Administration Division determines that a Detailed Investigation is warranted, or when Congress declares a bridge unreasonably obstructive, the District Commander will hold a public hearing near the location of the bridge to provide the bridge owner, waterway users, and other interested parties the opportunity to offer evidence and be heard, orally or in writing, as to whether any alterations are necessary to provide reasonably free, safe, and unobstructed passage for waterborne traffic. The District Commander will issue a public notice announcing the public hearing stating the time, date, and place of the hearing.

(b) When a bridge is statutorily determined to be an unreasonable obstruction, the scope of the hearing will be to determine what navigation clearances are needed.

(c) In all other cases, the scope of the hearing will be to address issues bearing on the question of whether the bridge is an unreasonable obstruction to navigation and, if so, what alterations are needed.

(d) The hearing will be recorded. Copies of the public hearing transcript will be available for purchase from the recording service.

§ 116.30 Chief, Bridge Administration Division Review and Evaluation.

(a) Upon receiving a Detailed Investigation Report from a District Commander, the Chief, Bridge Administration Division will review all the information and make a final determination of whether or not the bridge is an unreasonable obstruction to navigation and, if so, whether to issue an Order to Alter. This determination will be accompanied by a supporting written Decision Analysis which will include a Benefit/Cost Analysis, including calculation of a Benefit/Cost Ratio.

(b) The Benefit/Cost ratio is calculated by dividing the annualized navigation benefit of the proposed bridge alteration by the annualized government share of the cost of the alteration.

(c) Except for a bridge which is statutorily determined to be an unreasonable obstruction, an Order to Alter will not be issued under the Truman-Hobbs Act unless the ratio is at least 1:1.

(d) If a bridge is statutorily determined to unreasonably obstruct navigation, the Chief, Bridge Administration Division will prepare a Decision Analysis to document and provide details of the required vertical and horizontal clearances and the reasons alterations are necessary.

(e) If the Chief, Bridge Administration Division decides to recommend that the Commandant issue an Order to Alter, or a bridge is statutorily determined to unreasonably obstruct navigation, the Chief, Bridge Administration Division will issue a letter to the bridge owner (''The 60-Day Letter'') at least 60 days before the Commandant issues an Order to Alter. This letter will contain the reasons an alteration is necessary, the proposed alteration, and, in the case of a Truman-Hobbs bridge, an estimate of the total project cost and the bridge owner's share.

(f) If the bridge owner does not agree with the terms proposed in the 60-Day Letter, the owner may request a reevaluation of the terms. The request for a reevaluation must be in writing, and identify the terms for which reevaluation is requested. The request may provide additional information not previously presented.

(g) Upon receipt of the bridge owner's response, the Chief, Bridge Administration Division will reevaluate the situation based on the additional information submitted by the bridge owner. If after the Chief, Bridge Administration Division reviews the determination, there is no change, the Commandant may issue an Order to Alter as set out in § 116.35. The Chief, Bridge Administration Division's determination based on the reevaluation will constitute final agency action.

§ 116.35 Order to Alter.

(a) If the bridge owner agrees with the contents of the 60-Day Letter, if no reply is received by 60 days after the issuance of the letter, or if after reevaluation a bridge is determined to be an unreasonable obstruction to navigation, the Commandant will issue an Order to Alter.

(1) If a bridge is eligible for funding under the Truman-Hobbs Act, the Order to Alter will specify the navigational clearances to be accomplished in order to meet the reasonable needs of navigation.

(2) An Order to Alter for a bridge that is not eligible for Truman-Hobbs funding will specify the navigational clearances that are required to meet the reasonable needs of navigation and will prescribe a reasonable time in which to accomplish them.

(b) If appropriate, the Order to Alter will be accompanied by a letter of special conditions setting forth safeguards needed to protect the environment or to provide for any special needs of navigation.

(c) If a proposed alteration to a bridge has desirable, non-navigational benefits, the Chief, Bridge Administration Division may require an equitable contribution from any interested person, firm, association, corporation, municipality, county, or state benefiting from the alteration as a prerequisite to the making of an Order to Alter for that alteration.

(d) Failure to comply with any Order to Alter issued under the provisions of this part will subject the owner or controller of the bridge to the penalties prescribed in 33 U.S.C. 495, 502, 519, or any other applicable provision.

§ 116.40 Plans and specifications under the Truman-Hobbs Act.

(a) After an Order to Alter has been issued to a bridge owner under the Truman-Hobbs Act, the Chief, Bridge Administration Division will issue a letter to the bridge owner outlining the owner's responsibilities to submit plans and specifications to the Chief, Bridge Administration Division for the alteration of the bridge. The plans and specifications, at a minimum, must provide for the clearances identified in the Order to Alter. The plans and specifications may also include any other additional alteration to the bridge that the owner considers desirable to meet the requirements of railroad or highway traffic. During the alteration process, balanced consideration shall be given to the needs of rail, highway, and marine traffic.

(b) The Chief, Bridge Administration Division will approve or reject the plans and specifications submitted by the bridge owner, in whole or in part, and may require the submission of new or additional plans and specifications.

(c) When Chief, Bridge Administration Division has approved the submitted plans and specifications, they are final and binding upon all parties, unless later changes are approved by the Chief, Bridge Administration Division. Any changes to the approved plans will be coordinated with the District Commander.

§ 116.45 Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible for funding under the Truman-Hobbs Act.

(a) Once the plans and specifications for a bridge eligible for funding under the Truman-Hobbs Act have been

approved, the bridge owner must take bids for the alteration of the bridge consistent with the approved plans and specifications. Those bids must then be submitted to the Chief, Bridge Administration Division for approval.

(b) After the bridge owner submits the guaranty of cost required by 33 U.S.C. 515, the Chief, Bridge Administration Division authorizes the owner to award the contract.

(c) Partial payments of the government's costs are authorized as the work progresses to the extent that funds have been appropriated.

§ 116.50 Apportionment of costs under the Truman-Hobbs Act.

(a) In determining the apportionment of costs, the bridge owner must bear such part of the cost attributable to the direct and special benefits which will accrue to the bridge owner as a result of alteration to the bridge, including expected savings in repairs and maintenance, expected increased carrying capacity, costs attributable to the requirements of highway and railroad traffic, and actual capital costs of the used service life. The United States will bear the balance of the costs, including that part attributable to the necessities of navigation.

(b) ''Direct and special benefits'' ordinarily will include items desired by the owner but which have no counterpart or are of higher quality than similar items in the bridge prior to alteration. Examples include improved signal and fender systems, pro rata share of dismantling costs, and improvements included, but not required, in the interests of navigation.

(c) During the development of the Apportionment of Costs, the bridge owner will be provided with an opportunity to be heard. Proportionate shares of cost to be borne by the United States and the bridge owner are developed in substantially the following form:

Total cost of project _____ $_____
Less salvage _____ $_____
Less contribution by third party _____ $_____
Cost of alteration to be apportioned _____ $_____
Share to be borne by the bridge owner:
Direct and Special Benefits:
a. Removing old bridge _____ $_____
b. Fixed charges _____ $_____
c. Betterments _____ $_____
Expected savings in repair or maintenance costs:
a. Repair _____ $_____
b. Maintenance _____ $_____
Costs attributable to requirements of railroad and/or highway traffic _____ $_____
Expenditure for increased carrying capacity _____ $_____
Expired service life of old bridge _____ $_____
Subtotal _____ $_____
Share to be borne by the bridge owner _____ $_____
Contingencies _____ $_____
Total _____ $_____
Share to be borne by the United States _____ $_____
Contingencies _____ $_____
Total _____ $_____

(d) The Order of Apportionment of Costs will include the guaranty of costs.

§ 116.55 Appeals.

(a) Except for the decision to issue an Order to Alter, if a complainant disagrees with a recommendation regarding obstruction or eligibility made by a District Commander, or the Chief, Bridge Administration Division, the complainant may appeal that decision to the Chief, Office of Navigation Safety and Waterway Services.

(b) The appeal must be submitted in writing to the Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, within 60 days after the District Commander's or the Chief's, Bridge Administration Division decision. The Chief, Office of Navigation Safety and Waterway Services will make a decision on the appeal within 90 days after receipt of the appeal. The Chief's, Office of Navigation Safety and Waterway Services decision of this appeal shall constitute final agency action.

(c) Any Order of Apportionment made or issued under section 6 of the Truman-Hobbs Act, 33 U.S.C. 516, may be reviewed by the Court of Appeals for any judicial circuit in which the bridge in question is wholly or partly located, if a petition for review is filed within 90 days after the date of issuance of the order. The review is described in section 10 of the Truman-Hobbs Act, 33 U.S.C. 520. The review proceedings do not operate as a stay of any order issued under the Truman-Hobbs Act, other than an order of apportionment, nor relieve any bridge owner of any liability or penalty under other provisions of that act.

Dated: April 20, 1995.

R.C. Houle,

Acting Chief, Office of Navigation Safety and Waterway Services.

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33 CFR Part 165

[CGD01–95–014]

RIN 2115–AA97

Safety Zone: Parade of Ships, Fleet Week '95, Port of New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on May 24, 1995, for the Fleet Week '95 Parade of Ships. A moving safety zone is established 500 yards fore and aft, and 200 yards on each side of the designated column of vessels in this parade as it transits from the Verrazano Narrows Bridge to the George Washington Bridge on the Hudson River. As the vessels make their turns and proceed southbound in the Hudson River, the moving safety zone continues to encompass all waters within a 200 yard radius of each vessel until safely berthed.

EFFECTIVE DATE: This rule is effective from 9:30 a.m. until 4 p.m. on Wednesday, May 24, 1995, unless extended or terminated sooner by the Coast Guard Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group, New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On March 16, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 14246) concerning this regulatory action. Interested persons were requested to submit comments on or before April 17, 1995. No comments were received. A public hearing was not requested and one was not held. The proposed rule stated that the vessel column would transit from the Verrazano Narrows Bridge to the waters west of the 79th Street Boat Basin, Manhattan, New York. The Coast Guard has since determined that this would not be practical due to the assigned mooring and anchoring locations of the parade vessels. While the vessel column will transit approximately 8,300 yards north of the 79th Street Boat Basin, the parameters of the moving safety zone