

**DEPARTMENT OF JUSTICE****Office of the Attorney General****28 CFR Part 50****[AG Order No. 2270-99]****Practice and Procedure; Final Settlement Agreements and Consent Decrees****AGENCY:** Department of Justice.**ACTION:** Final rule.

**SUMMARY:** This rule codifies the Department of Justice's general policy that, in any civil matter in which the Department of Justice is representing the interests of the United States or its agencies, the Department will not enter into final settlement agreements or consent decrees that are subject to confidentiality provisions, nor will it seek or concur in the sealing of such documents. The rule further establishes internal procedures to be followed in determining whether, in a given case, rare circumstances exist that warrant an exception to the general policy.

**EFFECTIVE DATE:** November 2, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Plante, Executive Office for United States Attorneys, (202) 616-6444.

**SUPPLEMENTARY INFORMATION:** A written statement of the Department's policy with regard to seeking or concurring in the sealing of final settlement agreements or consent decrees will ensure uniformity of practice and be in keeping with the Department's general policy in favor of openness in government. There may be rare instances in which confidentiality is warranted, because privacy or other interests so outweigh the public interest. For this reason, the policy outlines a uniform process for approval of exceptions to the general rule in favor of openness.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 650(b)), the Attorney General has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule states the Department of Justice's internal policy with regard to the conduct of litigation in which it is involved; and (2) this rule imposes no requirements on small businesses or small entities.

**Administrative Procedure Act**

Because this rule states internal litigation policy and imposes no new

restrictions, the Department of Justice finds good cause for exempting the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date.

**Paperwork Reduction Act**

This rule does not impose any reporting or recordkeeping requirements.

**Executive Order 12866**

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

**Executive Order 12612**

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects in 28 CFR Part 50**

Administrative practice and procedure.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 516 and 519, part 50 of chapter 1 of title 28 is amended as follows.

1. The authority citation for Part 50 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1921 et seq., 1973c.

2. Section 50.23 is added to read as follows:

**§ 50.23 Policy against entering into final settlement agreements or consent decree that are subject to confidentiality provisions and against seeking or concurring in the sealing of such documents.**

(a) It is the policy of the Department of Justice that, in any civil matter in which the Department is representing the interests of the United States or its agencies, it will not enter into final settlement agreements or consent decrees that are subject to confidentiality provisions, nor will it seek or concur in the sealing of such documents. This policy flows from the principle of openness in government and is consistent with the Department's policies regarding openness in judicial proceedings (see 28 CFR 50.9) and the Freedom of Information Act (see Memorandum for Heads of Departments and Agencies from the Attorney General *Re: The Freedom of Information Act* (Oct. 4, 1993)).

(b) There may be rare circumstances that warrant an exception to this general rule. In determining whether an exception is appropriate, any such circumstances must be considered in the context of the public's strong interest in knowing about the conduct of its Government and expenditure of its resources. The existence of such circumstances must be documented as part of the approval process, and any confidentiality provision must be drawn as narrowly as possible. Non-delegable approval authority to determine that an exception justifies use of a confidentiality provision in, or seeking or concurring in the sealing of, a final settlement or consent decree resides with the relevant Assistant Attorney General or United States Attorney, unless authority to approve the settlement itself lies with a more senior Department official, in which case the more senior official will have such approval authority.

(c) Regardless of whether particular information is subject to a confidentiality provision or to seal, statutes and regulations may prohibit its

disclosure from Department of Justice files. Thus, before releasing any information, Department attorneys should consult all appropriate statutes and regulations (e.g., 5 U.S.C. 552a (Privacy Act); 50 U.S.C. 403-3(c)(6) (concerning intelligence sources and methods), and Execution Order 12958 (concerning national security information). In particular, in matters involving individuals, the Privacy Act regulates disclosure of settlement agreements that have not been made part of the court record.

(d) The principles set forth in this section are intended to provide guidance to attorneys for the Government and are not intended to create or recognize any legally enforceable right in any person.

Dated: October 26, 1999.

**Janet Reno,**

*Attorney General.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD09-99-077]

RIN-2115-AE47

#### **Drawbridge Operation Regulations; Duluth Ship Canal (Duluth-Superior Harbor), MN**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Commander, Ninth Coast Guard District is temporarily changing the regulations governing the Duluth Aerial Lift Bridge over Duluth Ship Canal in Duluth, MN. The bridge need not open for vessel traffic and will remain in the closed-to-navigation position from December 15, 1999, until March 20, 2000. This temporary rule has been authorized due to major rehabilitation and the need to immobilize the bridge for this project.

**DATES:** This temporary rule is effective from 12:01 a.m. on December 15, 1999, to 11:59 p.m. on March 20, 2000.

**ADDRESSES:** Documents concerning this temporary rule are available for inspection and copying at 1240 East Ninth Street, Room 2019, Cleveland, OH, 44199-2060 between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902-6084.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scot Striffler, Project Manager, Ninth

Coast Guard District Bridge Branch, at (216) 902-6084.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion of Temporary Rule**

On January 21, 1999, the City of Duluth, MN, requested the Coast Guard approve a time period when the Duluth Aerial lift bridge would not be required to open for vessel traffic in order to complete a major rehabilitation of the operating machinery and deck replacement. A 16-week closure was originally requested by the City.

Commander, Ninth Coast Guard District, solicited the input of commercial vessel operators and Coast Guard engineers and determined that the project could be completed within 13 and one-half weeks without imposing unreasonable restrictions on navigation, while still providing the necessary time to complete the rehabilitation work. (Between January 1 and March 15 each year, the bridge is required to open for vessels if at least 24 hours advance notice is provided.) The Coast Guard authorized the bridge to remain in the closed-to-navigation position from 12:01 a.m. on December 15, 1999 until 11:59 p.m. on March 20, 2000.

The closure dates were based on the traditional times of the least commercial shipping activity in Duluth Harbor. There is no recreational or small entity vessel traffic during this period due to heavy ice in the west end of Lake Superior and Duluth/Superior Harbor. The Coast Guard also considered the fact that an alternate access to the harbor is available through the federal channel in Superior, WI.

This temporary rule is being promulgated without a notice of proposed rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the extensive input by commercial marine interests, limited vessel activity during a majority of the closure period due to severe weather and ice, the need to perform the work necessary to maintain the bridge in a safe and operable condition during regular operating times, and the availability of access to the harbor through Superior Harbor Entry, notice and comment on this temporary final rule are unnecessary.

##### **Regulatory Evaluation**

This temporary 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 significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Access to the harbor will be available through another maintained waterway in close proximity to the bridge.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant impact on a substantial number of small entities. "Small entities" may include small businesses and 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.

Marine activity in the harbor is virtually non-existent during a majority of the authorized closure period due to extreme weather and ice. Only larger vessels, or specially designed vessels, are capable of transiting the harbor in heavy ice.

Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

##### **Collection of Information**

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### **Federalism**

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

##### **Environment**

The Coast Guard considered the environmental impact of this temporary rule and concluded that, under figure 2-1, paragraph 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.