

produce documentary evidence. If a hearing examiner may require a witness's attendance at a revocation proceeding through compulsory process, he obviously may determine those witnesses who should attend the proceeding upon request and in the absence of a subpoena. Since subpoenas frequently have to be reissued because of rescheduled revocation hearings, delegation of the task of issuing subpoenas would reduce the number of file transfers to the Commissioners, and again reserve their review for final case decisions.

As a result of the delegation, in some cases a hearing examiner's order will result in the discharge of an accused violator from custody. But the exercise of this power is limited to cases where the examiner finds no probable cause for the alleged violation. The delegation does not include the authority to release an accused violator to the community if probable cause for violation is found. See 18 U.S.C. 4214(a)(1)(A). Section 4203(c)(2) expressly provides only for the delegation of the power to make a probable cause finding and is silent on the power of restoring a parolee to supervision despite a finding of probable cause for parole violation. On this point, the Commission has decided to take a cautious approach in interpreting its statutory delegation authority. If a hearing examiner finds probable cause and nonetheless believes that the parolee should be returned to the community either before or without a revocation hearing, the case will be referred to a Commissioner for a decision as to release. A recommendation for release may be made, but this is the extent of the hearing examiner's authority.<sup>1</sup>

Finally, the amended rule provides that the delegated powers apply to the relevant provisions for parole revocations for U.S. Code offenders and for parole and supervised release revocations for D.C. Code offenders. Due to Section 11233(c)(2)(A) of the National Capital Revitalization and Self-Government Act of 1997,<sup>2</sup> the Commission is authorized to use the same procedures to revoke supervised release terms for D.C. Code offenders that apply to federal parolees.

Since the rule is only a procedural rule and pertains only to the allocation of functions within the Commission, the Commission has determined that the

rule is not subject to the notice and comment or the thirty-day delay provisions of 5 U.S.C. 553.

#### Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866. The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

#### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

#### The Final Rule

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

#### PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.23, paragraph (a) is amended by adding the following sentence to the end to read as follows:

#### § 2.23 Delegation to hearing examiners.

(a) \* \* \* Notwithstanding the provisions of §§ 2.48 through 2.51, §§ 2.101 through 2.104, and §§ 2.214 through 2.217, there is also delegated to hearing examiners the authority necessary to make a probable cause finding, to determine the location of a revocation hearing, and to determine the witnesses who will attend the hearing, including the authority to issue subpoenas for witnesses and evidence.

Dated: September 25, 2001.

**Edward F. Reilly, Jr.,**

*Chairman, Parole Commission.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD13-01-022]

#### Drawbridge Operations Regulations; Lake Washington, WA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Thirteenth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Evergreen Point Floating Drawbridge on State Route 520 across Lake Washington between Seattle and Bellevue, Washington. This deviation allows the Washington Department of Transportation (WSDOT) to close the floating retractable span from 12:01 a.m. on August 13 to 12:01 a.m. on October 8, 2001. Normally, the draw does not open between the hours of 5 a.m. and 9 p.m. Monday through Friday, except federal holidays. This deviation allows the bridge owner to bolt the floating span closed to immobilize it for center-lock replacement and other refurbishment.

**EFFECTIVE DATE:** This deviation is effective from 12:01 a.m. on August 13 to 12:01 a.m. on October 8, 2001.

**ADDRESSES:** Unless otherwise noted, documents referred to in this notice are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067, room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays. The Bridge Section of the Aids to Navigation and Waterways Management Branch maintain the docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220-7282.

**SUPPLEMENTARY INFORMATION:** The Evergreen Point Floating Bridge across Lake Washington at Seattle, Washington, provides no vertical clearance at the draw span when it is closed. Fixed transition spans from the floating portion of the bridge provide navigational openings. The West Fixed Span provides 45 feet of vertical clearance at all lake levels. The East Fixed Span has a gradient so that on the low (west margin) 57 feet is provided up to 64 feet on the side opposite (east margin). Most of the

<sup>1</sup> In this regard it is worth noting that Section 4203(c)(2) only permits the delegation of the function of recommending revocation and reparole dispositions. Consequently, hearing examiners may not make final decisions on these matters.

<sup>2</sup> Public Law 105-33; 111 Stat. 749 (Aug. 5, 1997) (now codified at D.C. Code 24-1233(c)(2)(A)).

vessels that ply Lake Washington can pass safely under the fixed transition spans. The number of draw openings have decreased so that the span has opened as little as 10 times annually in recent years. Most of these openings have been for construction equipment serving other WSDOT projects. State Route 520 is a major commuter route with a high daily traffic count. This deviation allows WSDOT to refurbish the bridge as quickly as possible without disrupting roadway traffic. Furthermore, this drawbridge is vulnerable to water and wind pressure because of its floating nature. This closure also facilitates completion of work at a time of year when these weather factors are minimal.

This temporary deviation, authorized under 33 CFR 117.35, allows the floating drawspan to remain closed from 12:01 a.m. on August 13 to 12:01 a.m. on October 8, 2001.

Dated: September 25, 2001.

**Erroll Brown,**

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

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD13-01-024]

#### **Drawbridge Operations Regulations; Duwamish Waterway, WA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Thirteenth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the dual First Avenue South Drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington. This deviation allows the Washington Department of Transportation (WSDOT) to close the bascule span from 12:01 a.m. on October 6 to 12:01 a.m. on October 7, 2001. Presently, the dual bascule need not open between the hours of 6 a.m. and 9 p.m. and from 3 p.m. to 6 p.m. Monday through Friday, except federal holidays. Openings are provided at any time for vessels of at least 5000 gross tons, vessels towing such vessels, or vessels enroute to tow such vessels. This deviation allows the bridge owner to repair a leaking hydraulic cylinder at one of the center locks.

**EFFECTIVE DATE:** This deviation is effective from 12:01 a.m. on October 6 to 12:01 a.m. on October 7, 2001.

**ADDRESSES:** Unless otherwise noted, documents referred to in this notice are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067, room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays. The Bridge Section of the Aids to Navigation and Waterways Management Branch maintain the docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220-7282.

**SUPPLEMENTARY INFORMATION:** The First Avenue South Drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington, provide 32 feet of vertical clearance above Mean High Water for the central 100 feet horizontally. Navigation on the waterway include tugs, large container barges, construction equipment, and recreational vessels. First Avenue South is a major commuter route Monday through Friday. The weekend was selected for the work because the large vessel traffic and road vehicle passage is reduced from normal weekday frequencies. The leaking cylinder for one of the cylinders will be replaced during this closure to prevent spillage in the waterway and maintain the span in operational condition. The center lock was probably damaged in the earthquake that occurred in Seattle on February 28, 2001.

This temporary deviation, authorized under 33 CFR 117.35, allows the dual First Avenue South drawspans to remain closed from 12:01 a.m. on October 6 to 12:01 a.m. on October 7, 2001.

Dated: September 25, 2001.

**Erroll Brown,**

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

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD01-01-176]

#### **Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills and Their Tributaries, NY**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Pulaski Bridge, mile 0.6, across Newtown Creek between Brooklyn and Queens, New York. This deviation allows the bridge to remain in the closed position from 7 a.m. on October 20, 2001 through 8 p.m. on October 21, 2001, to facilitate painting at the bridge.

**DATES:** This deviation is effective from October 20, 2001 through October 21, 2001.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The Pulaski Bridge, at mile 0.6, across Newtown Creek has a vertical clearance of 39 feet at mean high water, and 43 feet at mean low water in the closed position.

The existing drawbridge operation regulations are listed at 33 CFR 117.801(g) and require the draw to open on signal if at least a two-hour advance notice is given.

The bridge owner, New York City Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate painting at the bridge that can only be safely performed while the bridge is in the closed position.

This deviation to the operating regulations allows the Pulaski Bridge to remain in the closed position from 7 a.m. on October 20, 2001 through 8 p.m. on October 21, 2001.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: September 27, 2001.

**G.N. Naccara,**

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

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