

Dated: June 15, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 965

[Docket No. R-94-1676; FR-3275-F-02]

RIN: 2577-AB21

Lead-Based Paint Liability Insurance Coverage for Housing Authorities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: Public housing agencies and Indian housing authorities (collectively, housing authorities or HAs) conducting lead-based paint testing and abatement activities need to assure that they have adequate liability insurance coverage to cover the hazards inherent in these activities, in order to comply with insurance requirements of their Annual Contributions Contracts with HUD. This rule prescribes the nature and quality of liability insurance to protect HAs and contractors performing this work for HAs. The rule is being issued to comply with directions in the Department's appropriation act for Fiscal Year 1992 to adopt regulations specifying the nature and quality of insurance to cover HAs in the performance of this work.

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: John Comerford, Director, Financial Management Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1872. A telecommunications device for hearing or speech-impaired persons is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and approved under OMB control number 2577-0187, which is valid through August 1994.

II. Background

A. HUD Contract Requirements for Insurance

Under their Annual Contributions Contract (ACC) or Mutual Help Annual Contributions Contract (MHACC) with HUD, Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) (hereinafter referred to as HAs) must carry adequate (1) owner's, landlord's, and tenant's public liability insurance; and (2) manufacturer's and contractor's public liability insurance (both now combined and referred to by the insurance industry as commercial general liability insurance). When the conditions of the ACC or MHACC were formulated in 1969, it was not anticipated that there was any reason to address the issue of bodily injury due to the ingestion of lead-based paint, since the health hazard of this chemical was not well-known. Also, at that time, no pollution exclusion in the general liability policy was thought to apply to claims of this nature.

However, during subsequent years, as environmental claims started arising, insurance companies began to exclude pollution and environmental liability; and it is the opinion of most insurance companies that, since lead is a chemical which is included in the definition of a "pollutant", claims arising from lead poisoning are excluded from current policies. However, some courts have differed with the insurance companies' position on pollution exclusions.

HAs are engaging in lead-based paint testing and abatement, often funded by HUD under the Comprehensive Improvement Assistance Program or Comprehensive Grant Program, which support rehabilitation work needed to improve the condition of public housing units. The Department published a document in the Federal Register to guide these activities, entitled "Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing" (55 FR 14556, April 18, 1990, and revised 55 FR 39874, September 28, 1990, and 56 FR 21556, May 9, 1991). Use of these guidelines is the subject of other program regulations and notices of funding availability, and it is not addressed in this rule.

B. Appropriations Act

The Departments of Veterans Affairs and Housing and Urban Development Appropriations Act for Fiscal Year 1992, Pub L. 102-139, 105 Stat. 736 [approved October 28, 1991] ("1992 Act") included an express provision concerning selection of insurance to protect against the liability hazards involved in the

testing and abatement of lead-based paint, at 758 and 759:

Hereafter, until the Department of Housing and Urban Development has adopted regulations specifying the nature and quality of insurance covering the potential personal injury liability exposure of public housing authorities and Indian housing authorities (and their contractors, including architectural and engineering services) as a result of testing and abatement of lead-based paint in federally subsidized public and Indian housing units, said authorities shall be permitted to purchase insurance for such risk, as an allowable expense against amounts available for capital improvements (modernization). Provided, That such insurance is competitively selected and that coverage provided under such policies, as certified by the authority, provides reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in the testing and abatement of lead-based paint, and the managerial and quality assurance responsibilities associated with the conduct of such activities.

In other words, until a final rule is effective, HAs may proceed with lead-based paint abatement activities, selecting their own lead-based paint liability coverage so long as they determine it is appropriate for their needs.

A proposed rule was published on November 2, 1993 (FR 58513) which covered this subject. This final rule responds to comments received on that proposed rule.

III. Public Comments

The Department received comments from nine public sources. Three were from housing authorities. Two were from testing/abatement contractors or consultants. Three were from PHA-owned insurance entities or their administrators, and one was from a trade association.

Comment. Three sources questioned HUD's reasoning in not attempting to secure another master insurance policy that would provide liability coverage for both the contractor performing testing and abatement work, as well as the HA, and requested reconsideration of this decision. Two of the sources also recommended that such master policy also cover any type of contractor (plumbing, heating, mechanical, electrical, painting and decorating) who might come in contact with lead-based paint while performing their work.

Response. The Department rejects this recommendation for a number of reasons. In its report to Congress dated September 24, 1991, concerning the previous master policy which expired on October 1, 1993, the HUD Inspector General questioned the involvement of

HUD staff in the procurement of that policy. The IG felt that since this was not a Federal procurement, but an HA procurement subject to State procurement statutes and regulations, HUD's involvement should have been only in an advisory capacity. In addition, it is extremely doubtful that any insurance company would consider issuing a liability insurance policy to a HA that would cover as insured parties, contractors engaged in performing various types of skilled work only while working on HA premises. Should the housing authorities or any contractor trade associations desire to secure a master policy that meets the requirements of this rule and provides adequate protection for the exposure, they are free to do so. Also, since the passage of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992 (42 U.S.C. 4851-4856), other public and private housing owners are required to engage in lead-based paint testing and abatement. Since contractors performing these operations need insurance when working for other housing owners, a master policy obtained by HUD insuring them only while performing work for HAs would not fill all of their needs. In addition, there appears to be a more available market for this type of insurance than prevailed in 1990 when the previous master policy was obtained.

Comment. The rule should have a "grandfather clause" allowing HAs and contractors to continue coverage that was obtained prior to the effective date of the rule even though the policy does not meet the rule requirements.

Response. The Department agrees that it should not require midterm cancellation of any policy that would result in a short rate penalty in order to comply with the rule and has modified the rule accordingly. It will be necessary, however, to comply with the requirements of the rule when the policy in force on the effective date of the rule expires.

Comment. In order to expand the availability of insurance policies that would qualify under the rule, allow a "claims made" form as long as it has a discovery period.

Response. The Department is willing to allow a "claims made" form, as long as it has a discovery period of at least five years, and the rule has been changed to that effect.

Comment. Professional Liability insurance for architects and engineers cannot be obtained on an "occurrence" form and insurance companies insuring the contractors and HAs for liability do

not want to add this coverage to their policies.

Response. It was not the intent that this rule was to apply to Professional Liability policies obtained by architectural and engineering firms, and the rule has been clarified accordingly. The HA, however, should have these firms provide evidence that they do have some type of Professional Liability insurance in effect.

Comment. Even though the contractor purchases the insurance and names the HA as an additional insured, the HA should also be required to purchase primary insurance to cover any exposure to liability for claims not directly related to work being done by the contractor.

Response. While such an exposure may exist, the Department believes that the exposure is more limited than the exposure that already exists prior to any abatement work, and liability insurance to protect against claims for the mere existence of lead-based paint has never been required. Although not a requirement, there is no prohibition against the HA purchasing this insurance if it feels it is necessary and can afford to do so.

Comment. The rule should allow defense costs to be included within the policy limit, since some of the insurance companies providing this insurance are now issuing policies on this basis.

Response. To make coverage more readily available, the Department is willing to allow a limit being placed on the cost of defense prior to being deducted from the limit of liability, as long as the defense limit is not less than \$250,000 per claim. The rule has been amended to that effect.

Comment. The rule should encourage insurers to underwrite the risk by requiring them to analyze the risk of each abatement project and assure that there is proper guidance and technical assistance throughout the abatement process.

Response. The Underwriting Department of each insurance company is charged with the responsibility of approving and accepting each risk they insure. Most insurance companies also have Loss Control Departments that work with their insureds in an effort to promote safe work habits and procedures and reduce losses. It would be inappropriate for HUD to attempt to dictate to the insurance company how they should underwrite and service the accounts they insure.

Comment. Since the statutory requirement found in the 1992 Appropriations Act that coverage be purchased through a competitive process expires with the promulgation

of this regulation, HAs should be entitled to purchase this coverage from a HA-owned insurance entity without competitive bidding.

Response. We agree. Since issuance of the Final Rule setting Financial Standards for Housing Authority-Owned Insurance Entities which became effective on November 4, 1993, HAs are now authorized to obtain any line of insurance from a non-profit insurance entity that is owned and controlled by HAs and approved by HUD. Since this is now permitted by 24 CFR 905.190 and 965.201, no additional clarification in this rule is necessary.

Comment. Paragraph (e) should be eliminated from the rule since it is gratuitous.

Response. The provision concerning the HA's responsibility for supervision of testing and abatement activity has been moved to the general paragraph.

Comment. Requiring small (some as low as one or two persons) contractors to purchase this type of insurance will have an enormous impact on small businesses due to the high minimum premiums and total cost involved.

Response. While this may very well be true, the Department is not willing to waive the insurance requirement for small businesses. The underwriting standards of insurance companies may preclude them from insuring accounts that do not generate a certain minimum premium. However, if the Department were to waive the insurance requirement for small contractors, it would place both the contractor and the HA at risk for uninsured claims.

Comment. The minimum required limit should be raised to \$1,000,000 per occurrence with no annual aggregate being permitted.

Response. The \$500,000 limit is only a minimum. Higher limits are permitted and highly recommended. It was not felt that the Department should require substantially higher minimum limits than required for other forms of insurance, particularly automobile and commercial general liability. The absence of an annual aggregate limit would be very desirable. However, few insurance companies are willing to issue a policy without one. To insist upon having no annual aggregate limit would severely restrict the market availability and certainly increase the cost.

Comment. The rule should address all forms of insurance including workers compensation, general liability and professional liability.

Response. This rule is concerned only with the provisions of Pub. L. 102-139, 105 Stat. 736 concerning selection of insurance to protect against the liability

hazards involved in the testing and abatement of lead-based paint.

IV. Findings and Certifications

A. Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, when the proposed rule was issued. No changes made in this final rule require any changes in that finding. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule merely gives standards used by HUD in approving the sources of insurance coverage selected by HAs in accordance with longstanding provisions of the contracts between them and HUD. As a result, the rule is not subject to review under the order.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

D. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to specifying the nature and quality of liability insurance for the hazards of testing for and abatement of lead-based paint; and

while it may be more difficult for small entities to obtain the insurance or to obtain it at a reasonable cost, this is a factor controlled by the insurance marketplace, and not by the establishment of this rule.

E. Regulatory Agenda

This rule was listed as item 1703 under the Office of Public and Indian Housing in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20474) under Executive Order 12866 and the Regulatory Flexibility Act.

F. Catalog

The Catalog of Federal Domestic Assistance numbers for the public housing and Indian housing programs affected by this rule are 14.850 and 14.851.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, the Department amends 24 CFR parts 905 and 965 as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

2. A new § 905.195 is added to subpart B, to read as follows:

§ 905.195 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint that the IHA undertakes, in accordance with the IHA's ACC or MHACC with HUD. The insurance coverage does not relieve the IHA of its

responsibility for assuring that lead-based paint testing and abatement activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the IHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by IHA employees, the IHA must obtain a liability insurance policy directly to protect the IHA. If the work is being done by a contractor, the IHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the IHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the IHA, the policy shall name the IHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the IHA as an additional insured, in connection with performing work under the IHA's lead-based paint testing and abatement contract. If the IHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the IHA, the RMC shall also be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be \$500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed \$5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than \$250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form, or a "claims made" form that contains an extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss if the policy

was in effect when the loss occurred, regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is \$1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the IHA or contractor and in force on the date this rule is effective which provides coverage for the hazards involved in the testing for and abatement of lead-based paint, shall be considered as meeting the requirements of this rule until the expiration of the policy. This rule is not applicable to architects, engineers, or consultants who do not physically perform lead-based paint testing and abatement work.

(d) *Insurance for the existence hazard.* An IHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. An IHA may purchase this coverage if, in the opinion of the IHA, the policy meets the IHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards of this subpart B. If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

3. A new § 905.585 is added to subpart H, to read as follows:

§ 905.585 Insurance coverage.

For the requirements concerning an IHA's obligation to obtain reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint, see § 905.195.

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

4. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, 3535(d). Subpart H is also issued under 42 U.S.C. 4821-4846.

5. A new § 965.215 is added to subpart B, to read as follows:

§ 965.215 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based

paint that the PHA undertakes, in accordance with the PHA's ACC with HUD. The insurance coverage does not relieve the PHA of its responsibility for assuring that lead-based paint testing and abatement activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by a contractor, the PHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA's lead-based paint testing and abatement contract. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be \$500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed \$5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than \$250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form, or a "claims made" form that contains an

extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is \$1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the PHA or contractor and in force on the date this rule is effective which provides coverage for the hazards involved in testing for and abatement of lead-based paint, shall be considered as meeting the requirements of this rule until the expiration of the policy. This rule is not applicable to architects, engineers, or consultants who do not physically perform lead-based paint testing and abatement work.

(d) *Insurance for the existence hazard.* A PHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards. (See 24 CFR part 85 and §§ 965.205.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

6. A new § 965.705 is added to subpart H, to read as follows:

§ 965.705 Insurance coverage.

For the requirements concerning a PHA's obligation to obtain reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint, see § 965.215.

Dated: June 13, 1994.

Joseph Shuldiner,
Assistant Secretary for Public and Indian Housing.
[FR Doc. 94-14981 Filed 6-20-94; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-94-058]

Drawbridge Operation Regulations;
Apponagansett River, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has authorized the Town of Dartmouth, Massachusetts, to temporarily deviate for ninety (90) days from the operating regulations governing the Padanaram Bridge mile 1.0 over the Apponagansett River in Dartmouth, Massachusetts. This deviation limits the number of openings during peak traffic periods of the day. This deviation will permit evaluation of the regulated opening schedule on both marine and vehicular traffic in conjunction with the operation of new automatic, in lieu of manual, traffic gates.

DATES:

(1) The deviation is effective for 90 days from June 3, 1994 through August 31, 1994.

(2) Comments on the effects of the deviation must be received on or before September 15, 1994.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Avenue, Boston, Massachusetts 02110-3350.

Comments and other materials referenced in this notice are available for inspection and copying by appointment at the above address. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION:**Background and Purpose**

The Padanaram Bridge over the Apponagansett River between Dartmouth and South Dartmouth has a vertical clearance of 9' above mean high water (MHW) and 12' above mean low water (MLW). The current operating regulations (33 CFR 117.587) provide that from 1 May to 31 October from 5 a.m. to 9 p.m. daily, the bridge need open on signal only on the hour and half hour. At all other times at least six hours advance notice must be given.

This deviation permits the bridge to open twice an hour, on the hour and half hour, from 5 a.m. to 9 a.m. and from 8 p.m. to 9 p.m. and once an hour on the hour from 9 a.m. to 8 p.m.

In the spring of 1993, the Town of Dartmouth requested a change from the operating regulations to permit opening once an hour rather than twice an hour. The town selectmen felt that the traffic congestion during peak summer months was a result of the bridge opening every 30 minutes and was causing village commerce to suffer. The selectmen also considered the 30 minute opening schedule a serious risk to public safety because emergency vehicles could not travel to and from South Dartmouth during the traffic delays caused by the bridge opening every half hour. The Town of Dartmouth requested that the bridge be required to open only once an hour for a test period of 60 days to evaluate the effects on vehicular and marine traffic. This request was approved and the first deviation from the permanent regulations was effective from July 1, 1993, through August 29, 1993. See (58 FR 38056; July 15, 1993). It provided an opportunity to evaluate the effects of the deviation on marine and vehicular traffic. The Coast Guard implemented a second deviation for thirty-two days (32) to the regulations to evaluate alternative opening time periods for the Padanaram Bridge. See (58 FR 47067; Sep. 7, 1993). There were 29 comment letters received for these deviation periods. Twenty were in favor of the hourly openings and nine were opposed to the change. Most of the letters in opposition indicated that the lack of facilities to tie up vessels while waiting for openings was the main concern. The Town of Dartmouth has installed traffic signals, automatic traffic gates, navigational lights, clearance gauges and regulation signs since the last deviation period of 32 days was implemented.

Additionally, a detailed engineering study has been prepared for major repairs to the bridge. The town has requested state funds for the proposed repairs and expects approval in the fall of 1994. The Coast Guard is authorizing a third deviation for a period of 90 days to evaluate the effects of the recent improvements to the bridge. This third temporary deviation retains the requirement for the bridge to open on signal as soon as possible for vessels of the United States, state and local vessels used for public safety and vessels in distress.

Request for Comments

The Coast Guard encourages interested persons to participate in

evaluation of possible changes to the regulations governing the Padanaram Bridge over the Apponagansett River by submitting written data, or arguments for or against the deviation. Persons submitting comments should include their name and address and identify this Rulemaking (CGD01-94-058) and the specific section of this deviation to which each comment applies, and give reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a notice of proposed Rulemaking and request additional comments as part of the Rulemaking process. All comments received from this and the previous deviations will be considered in the Rulemaking process. Persons may submit comments by writing to the Commander (obr), First Coast Guard District listed under **ADDRESSES**.

Notice

Notice is hereby given that:

(1) The Coast Guard has granted the Town of Dartmouth, Massachusetts, a temporary deviation from the operating requirements listed in 33 CFR 117.587 paragraph (b) governing the Padanaram Bridge over the Apponagansett River.

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of 33 CFR 117.43 for the purpose of evaluating possible changes to the permanent regulations.

(3) The period of deviation is effective June 3, 1994 to August 31, 1994.

(4) During the deviation period the Padanaram Bridge shall operate as follows:

(i) From 5 a.m. to 9 a.m. and from 8 p.m. to 9 p.m. the bridge shall open on signal, twice an hour, on the hour and the half hour.

(ii) From 9 a.m. to 8 p.m. the bridge shall open on signal once an hour, on the hour.

(iii) From 9 p.m. to 5 a.m. the bridge shall open on signal if at least 6 hours advance notice is given.

Dated: May 31, 1994.

K.W. Thompson,

*Captain, U.S. Coast Guard Acting
Commander, First Coast Guard.*

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