



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-1015]

RIN 1625-AA09

Drawbridge Operation Regulation; China Basin, Mission Creek, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the 3rd Street Bridge, across China Basin, Mission Creek, mile 0.0, at San Francisco, California. This action is necessary to allow the bridge owner, the City of San Francisco, to keep the drawspan in the closed-to-navigation position in order to conduct critical mechanical and structural rehabilitation over an estimated 18 month period, scheduled to commence in February 2018. The temporary change to the regulations is expected to meet the reasonable needs of navigation on the waterway. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2017-1015 using Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516; e-mail Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On October 20, 2017, the City of San Francisco submitted a request to the Coast Guard to temporarily change the drawbridge operating schedule for the 3rd Street Bridge.

The 3rd St Bridge at mile 0.0, across China Basin, Mission Creek, at the City of San Francisco, California, has a vertical clearance of 3 feet at mean high water and 8 feet at mean low water. The waterway users are recreational, law enforcement, and search and rescue.

The purpose of this proposed temporary rule is to allow the bridge owner to

conduct critical mechanical and structural rehabilitation of the bridge. It is reported that the bridge is not structurally deficient; however, clear evidence of damaged and buckled steel members and other damage to the bridge and the trunnion mechanism have been identified. Without preventative maintenance, the damage will worsen and ultimately compromise the structural integrity of the bridge. The work will include blast cleaning and painting structural steel, replacing the bridge deck, repairing the fender systems, repairing the concrete counter weight, coating steel piles to inhibit corrosion, and repairing the bridge endlocks.

The existing regulations in 33 CFR 117.149 require the bridge to open on signal if at least one hour notice is given.

III. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations in 33 CFR 117.149 by temporarily modifying the regulation for the draw of the 3rd Street bridge. This proposed change will allow the bridge owner to secure the bridge in the closed-to-navigation position in order to conduct critical rehabilitation work on the bridge.

China Basin, Mission Creek, is 0.64 miles in length with the 3rd Street Bridge at the mouth of the basin. Approximately 35 vessels are moored upstream of the bridge and require the drawspan to open in order to depart the basin into San Francisco Bay. The City of San Francisco has indicated that they will assist vessel owners in China Basin, Mission Creek, and find alternate moorings during the closure period. Vessels able to transit the bridge, while in the closed-to-

navigation position, can continue to do so during the closure period.

There are no alternative routes into China Basin, Mission Creek.

In the event of an emergency, the bridge operator can open on signal if at least 45 days advance notice is given.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the limited number of vessels impacted and the ability of those vessel owners, located upstream of the bridge, to receive assistance from the City of San Francisco in finding alternate moorings while the bridge is in the closed-to-navigation position. In addition, rehabilitation of the bridge is needed to ensure the safety and continued operation

of the drawspan. We believe that the proposed rule, in keeping the drawspan in the closed-to-navigation position during the bridge's rehabilitation, would meet the reasonable needs of present and future navigation on the waterway.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, 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. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in

understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or

Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph 32(e) of Figure 2-1 of Commandant Instruction M16475.1D. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters.

Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you

go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. From February 28, 2018 to September 30, 2019 revise § 117.149 to read as follows:

§ 117.149 China Basin, Mission Creek.

- (a) The draw of the 3rd Street bridge, mile 0.0, at San Francisco, need not be opened for the passage of vessels. The draw shall be returned to operable condition within 45 days after notification by the District Commander to do so.
- (b) The draw of the 4th Street bridge, mile 0.2, at San Francisco, shall open on signal if at least one hour notice is given.

Dated: November 7, 2017.
Todd A. Sokalzuk,
Rear Admiral, U.S. Coast Guard,
Commander, Eleventh Coast Guard District.

