



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0926]

RIN 1625-AA09

Drawbridge Operation Regulation; Hudson River, Albany and Rensselaer, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the CSX Transportation Bridge across the Hudson River, mile 146.2, between Albany and Rensselaer, New York. The bridge owner, National Railroad Passenger Corporation (Amtrak), submitted a request to allow the bridge to require four hours' notice for bridge openings. This proposed rule would extend the notice required for bridge opening during the summer months due to the infrequent number of requests, and reduce burden on the bridge tender.

DATES: Comments and related material must reach the Coast Guard on or before [60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2017-0926 using Federal e-Rulemaking 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 Miss Stephanie E. Lopez, Bridge Management Specialist, First Coast Guard District, telephone (212) 514-4335, e-mail Stephanie.E.Lopez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The CSX Transportation (Livingston Ave) Bridge at mile 146.2, across the Hudson River, between Albany and Rensselaer, New York, has a vertical clearance of 25 feet at mean high water and 32 feet at mean low water. Vertical clearance is unlimited when the draw is open. Horizontal clearance is approximately 98 feet. The waterway users include recreational and commercial vessels including tugboat/barge combinations as well as tour/dinner boats.

The existing drawbridge operating regulation, 33 CFR 117.791(c), requires the draw of CSX Transportation Bridge to open on signal; except that, from December 16 through March 31, the draw shall open on signal if at least 24 hours' notice is given.

The owner of the bridge, National Railroad Passenger Corporation, requested a change to the drawbridge operating regulations to allow the bridge owner to require 4 hours'

notice before the draw opens on signal between April 1 and December 15, from 11 p.m. to 7 a.m., due to infrequent requests to open the bridge. This rule change will allow for more efficient and economical operation of the bridge while still meeting the reasonable needs of navigation.

III. Discussion of Proposed Rule

Review of the bridge logs in the last three years shows that the bridge averages a total of 24 openings annually during the period from April 1 to December 15, between 11 p.m. and 7 a.m. A preliminary notice sent September 8, 2017, to various stakeholders and agencies indicated no objection to the proposed rule change from mariners or other stakeholders. The Coast Guard proposes to permanently change the drawbridge operating regulation 33 CFR 117.791(c).

The proposed rule would provide that, from April 1 through December 15, between the hours 7 a.m. and 11 p.m., the draw shall open on signal, and between the hours of 11 p.m. and 7 a.m., the draw shall open on signal if at least 4 hours notice is given. It is our opinion that this rule meets the reasonable needs of marine and rail traffic.

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 Office of Management and Budget (OMB) has not reviewed the NPRM and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still open the draw and transit the bridge given advanced notice. We believe that this proposed change to the drawbridge operation regulations at 33 CFR 117.791(c) will meet the reasonable needs of navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

The bridge provides 25 feet of vertical clearance at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridge will continue to open on signal for any vessel provided at least 4 hour advance notice is given. 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 (Pub. L. 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, above. 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 above.

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.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 figure 2-1, paragraph (32) (e), of the instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. 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 e-Rulemaking 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. In §117.791, revise paragraph (c) to read as follows:

§ 117.791 Hudson River.

* * * * *

(c) The draw of the CSX Transportation Bridge, mile 146.2, between Albany and Rensselaer, shall open on signal; except that, from April 1 through December 15, from 11 p.m. to 7 a.m., the draw shall open on signal if at least 4 hours notice is given and, from December 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

* * * * *

Dated: July 26, 2018.

A. J. Tiongson,
Rear Admiral, U.S. Coast Guard,
Commander, First Coast Guard District.

[FR Doc. 2018-17208 Filed: 8/9/2018 8:45 am; Publication Date: 8/10/2018]