



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0404]

RIN 1625-AA09

Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the South Park highway bridge, across the Duwamish Waterway mile 3.8, at Seattle, WA. This rule removes the nighttime bridge operator, and will require a 12 hour advance notice for a late evening to early morning opening.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2019-0404 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Steven M. Fischer, Bridge Administrator, Thirteenth Coast

Guard District Bridge Program Office, telephone 206-220-7282; e-mail d13-pf-d13bridges@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On March 29, 2019 we published a notice of proposed rulemaking entitled “Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA” in the Federal Register (84 FR 11912). This notice of proposed rulemaking was preceded by a six month test deviation published in the Federal Register (83 FR 10785) on March 13, 2018. The test deviation ran from March 22, 2018 to September 17, 2018. We received three comments on this rule during the deviation. Those comments and the response to the comments can be found in the NPRM, “Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA” in the Federal Register (84 FR 11912). We received no comments on the NPRM.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Duwamish Waterway provides no alternate route to pass around the South Park Bridge. The subject bridge provides 34 feet in the center of the span and 27 feet at the sides of the span above mean high water. King County, WA, owns the

South Park Bridge, but the Seattle Department of Transportation (SDOT) operates the bridge per 33 CFR 117.1041(a)(2).

On behalf of SDOT, King County requested a permanent change to the existing operating regulation of the South Park Bridge. Due to infrequent bridge opening requests from 11 p.m. to 7 a.m., King County proposed to eliminate the nighttime bridge operator. This rule will remove SDOT's bridge operator from 11 p.m. to 7 a.m. unless a 12 hours' notice has been received prior to an opening request. If emergency responders require a bridge opening between 11 p.m. and 7 a.m., the South Park Bridge will open within 45 minutes from initial notification to the Fremont Bridge operator. Vessels engaged in sea-trials or dredging activities may request a standby drawtender to open the bridge, on demand, during sea-trials and/or dredging operations, if at least a 24 hour notice is given to the South Park Bridge drawtender. This rule reasonably accommodates waterway users while reducing SDOT's burden in operating the subject bridge. Vessels operating on the Duwamish Waterway range from small pleasure craft, small tribal fishing boats, large size pleasure motor vessels and large commercial vessels and barges.

IV. Discussion of Comments, Changes and the Final Rule

During the 30 day comment period ending April 30, 2019 no comments were received. The South Park Bridge will require a 12 hour notice given by telephone to the bridge operator (SDOT) between 7 a.m. and 11 p.m., and for emergencies between 11 p.m. to 7 a.m. call the Fremont Bridge operator. The phone numbers to use for a bridge opening is posted at the subject bridge, and the

Coast Guard will publish the phone numbers and this rule in the Local Notice to Mariners (LNM) for six months after the approval date. In addition to the LNM, phone numbers for the two bridge operators will be added to the Coast Pilot. This rule adds 33 CFR 117.1041(a)(3) to provide specific requirements for the operation of the South Park Bridge.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analysis 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 rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it 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 ability that vessels can still transit the bridge given advanced notice. This rule also applies to emergency openings.

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 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 under the bridge may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owners or operators.

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 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business.

If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls 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 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 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. We have not received any comments for this rule change.

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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble. We have not received any comments for this rule change.

F. Environment

We have analyzed this 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 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 rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction. A Record of Environmental Consideration and a Memorandum for the Record are not required for this 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.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 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; and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.1041 by adding paragraph (a)(3) to read as follows:

§ 117.1041 Duwamish Waterway.

(a) ***

(3) Between the hours of 11 p.m. and 7 a.m., Monday through Sunday, the South Park Bridge shall open if at least a 12 hour notice is given by telephone or VHF radio to the drawtender at the South Park Bridge. If emergency responders require a bridge opening between 11 p.m. and 7 a.m., the South Park Bridge shall open within 45 minutes from initial notification to the Fremont Bridge operator. Vessels engaged in sea-trials or dredging activities may request a standby drawtender to open the bridge, on demand, during sea-trials and/or dredging operations, if at least a 24 hour notice is given to the South Park Bridge drawtender.

David G. Throop,
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Commander, Thirteenth Coast Guard District.
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