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9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG-2019-0086]**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Hackensack River, Little Snake Hill, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Amtrak Portal Bridge across the Hackensack River, mile 5.0, at Little Snake Hill, New Jersey. The bridge owner, National Railroad Passenger Corporation (Amtrak), submitted a request to require a greater advance notice for bridge openings, to increase the time periods the bridge remains in the closed position, and reduce bridge openings during the morning and evening commuter rush hours. It is expected that this change to the regulations will better serve the needs of the community while continuing to meet the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0086 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 Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514-4336, e-mail [Judy.K.Leung-Yee@uscg.mil](mailto:Judy.K.Leung-Yee@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

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

### **II. Background, Purpose and Legal Basis**

The Amtrak Portal Bridge at mile 5.0, across the Hackensack River, at Little Snake Hill, New Jersey, has a vertical clearance of 23 feet at mean high water and 28 feet at mean low water. Horizontal clearance is approximately 99 feet. The waterway users include recreational and commercial vessels, including tugboat/barge combinations.

The existing drawbridge operating regulations are listed at 33 CFR 117.723(e).

In December of 2018, the owner of the bridge, National Railroad Passenger Corporation, requested a change to the drawbridge operation regulations because the volume of train traffic across the bridge during the peak commuting hours makes bridge openings impractical under the current schedule. As a result, bridge openings that occur during peak commuter train hours cause significant delays to commuter rail traffic. The owner proposed

that the bridge opening schedule be revised so the bridge need not open for the passage of vessel traffic, Monday through Friday, from 5 a.m. to 10 a.m. and from 3 p.m. to 8 p.m. At all other times the bridge shall open on signal if at least 24 hour notice is given.

The Coast Guard reached out to the maritime stakeholders with the requested change proposed by the bridge owner. A stakeholder provided a general objection to the change in the original request in December 2018, prior to the test deviation's publication.

The Coast Guard published a test deviation with request for comment that changed the original request, Hackensack River, New Jersey, in the Federal Register (84 FR 9459), in effect from March 15, 2019 through September 9, 2019, to test the proposed changes to the drawbridge operation regulations. The Coast Guard received five comments in the docket regarding this proposed rulemaking. Of those five comments, three came from one commenter and did not address this action. One comment supported the test deviation recommending it be made permanent. The fifth comment came from the aforementioned stakeholder who asked that their original negative comment be uploaded to the docket for the test deviation. The general objection contended that Amtrak's "inability to operate the Portal Bridge as required" is not the responsibility of the commenter, and that the proposed changes would fail to solve the maintenance issues with the bridge. The Coast Guard cannot speak to the commenter's assertion on maintenance issues or operational issues, as this proposed change would be for traffic volume purposes.

### **III. Discussion of Proposed Rule**

As a result of comments received from the test deviation and the bridge logs showing only three requests to open from March 14, 2019 through July 12, 2019, the Coast Guard

proposes to permanently change the drawbridge operation regulations at 33 CFR 117.723(e), that would allow Amtrak Portal Bridge at mile 5.0, across the Hackensack River, at Little Snake Hill, New Jersey, to operate as follows:

The draw need not open for the passage of vessel traffic from 5 a.m. to 10 a.m. and from 3 p.m. to 8 p.m. Additional bridge openings shall be provided for tide restricted commercial vessels between 7 a.m. and 8 a.m. and between 5 p.m. and 6 p.m., if at least a two-hour advance notice is given by calling the number posted at the bridge. At all other times the bridge shall open on signal if at least two-hour advance notice is given. It is the Coast Guard's 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.

The Coast Guard believes this rule is not a significant regulatory action. The bridge will still open for all vessel traffic after a two hour advance notice is given, except during the

morning and afternoon commuter rush hour periods, where a one hour time period will allow passage of commercial vessels. The vertical clearance under the bridge in the closed position is relatively high enough to accommodate most vessel traffic during the time periods the draw is closed during the morning and evening commuter rush hours. We believe that this proposed change to the drawbridge operation regulations at 33 CFR 117.723(e) 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 23 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 2-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 (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, 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 Environmental Planning COMDTINST 5090.1 (series), 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 that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally, this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

*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; DHS Delegation No. 0170.1.

2. Revise §117.723(e) to read as follows:

§ 117.723 Hackensack River.

\* \* \* \* \*

(e) The draw of the Amtrak Portal Bridge, mile 5.0, at Little Snake Hill, New Jersey, need not open for the passage of vessel traffic from 5 a.m. to 10 a.m. and from 3 p.m. to 8 p.m. Additional bridge openings shall be provided for tide restricted commercial vessels between 7 a.m. and 8 a.m. and between 5 p.m. and 6 p.m., if at least a two-hour advance notice is given by calling the number posted at the bridge. At all other times the bridge shall open on signal if at least two-hour advance notice is given.

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Dated: September 19, 2019

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