



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: Final rule.

SUMMARY: The Coast Guard is modifying 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 to 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: 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-2019-0086 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 Ms. Judy Leung-Yee, First Coast Guard District, Project Officer, telephone 212-514-4336, e-mail Judy.K.Leung-Yee@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 Information and Regulatory History

On March 15, 2019, the Coast Guard also published a temporary deviation with a request for comments (84 FR 9459), to test a proposed schedule. Five comments were received during the test period and those comments were addressed in the aforementioned NPRM.

On October 7, 2019, the Coast Guard published a notice of proposed rulemaking entitled “Drawbridge Operation Regulation; Hackensack River, Little Snake Hill, NJ,” in the **Federal Register** (84 FR 53350). In the NPRM, incorrect number of openings was provided. The correct number is provided below in Section III. We received three comments in response to the NPRM.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 499. The Amtrak Portal Bridge at mile 5.0 over 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 the NPRM, the Coast Guard mistakenly reported that there were three requests to open from March 14, 2019 through July 12, 2019. There were actually only two requests to open during this period.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided 60 days for comment regarding this rule and three comments in the docket were received, with one comment received after the December 6, 2019, closing date. Two of comments supported the rulemaking but recommended greater advance notice (24 & 48 hours, respectively), increasing each peak commuting hour time periods by one hour and completely banning bridge openings during these

commuter time periods. A third commenter recommended a four-hour advance notice for tide-restricted vessels. In addition, one commenter recommended changing the language from “need not open” to “shall not open.” The Coast Guard disagrees with these suggestions. As a result of the aforementioned reach out to maritime stakeholders, and in agreement with Amtrak, all concerned agreed a two-hour advance notice would be sufficient time for the bridge owner to assemble a team of technicians for the scheduled opening and address any mechanical and electrical issues that might arise. There is active commercial and recreational traffic on this waterway with the bridge logs indicating two requests to open from October 7, 2019, through December 6, 2019, during the NPRM comment period; therefore any permanent closure of the bridge is not an option. If the word “need” be replaced with “shall,” this would make passage prohibitive, due to the safety of navigation for vessels affected by tide influence and the permissibility of emergency vessels or vessels in an emergency situation (33 CFR 117.31) to pass. One commenter recommended permanently leaving the bridge closed with an agreement by Amtrak to replace it with a new fixed bridge with a vertical clearance of 25 feet. A Coast Guard Bridge Permit was issued to Amtrak approving a new fixed bridge with 50ft of vertical clearance.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The final rule provides 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.

V. Regulatory Analyses

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

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.

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 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 received no comment from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will 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 two-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 V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 does 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 rule has implications for federalism or Indian tribes, please call or email 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f) and have determined 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 rule promulgates the operating regulations or procedures for drawbridges. 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.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are 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. 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: January 30, 2020.

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