



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-0591]

RIN 1625-AA09

Drawbridge Operation Regulation; Anacostia River,
Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation that governs the operation of the CSX Railroad Vertical Lift Bridge across the Anacostia River, mile 3.4, at Washington, DC. The change will alter the eight hour advance notice requirement for a bridge opening to a 48 hour advance notice requirement for a bridge opening. The operating regulation change gives more notice for trains and vessels to adjust their schedules accordingly to ensure safe and efficient transits across and under the bridge.

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

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble

as being available in the docket, are part of docket USCG-2011-0591 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0591 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lindsey Middleton, Coast Guard; telephone 757-398-6629, e-mail Lindsey.R.Middleton@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 23, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Anacostia River, Washington, DC in the Federal Register (76 FR 163). We did not receive public comments on the proposed rule. No public meeting was requested, and none

was held.

Basis and Purpose

The CSX Railroad Company has requested a change in the operation regulation for the CSX Railroad Vertical Lift Bridge, across the Anacostia River, mile 3.4, at Washington, DC. The new 48 hour advance notice requirement replaces the current eight hour advance notice requirement for a bridge opening. This rail-line is used for regular passenger service and train transits across this bridge on an average of 21 times a day. As a result, it is necessary that ample time be given to maintain an accurate schedule for trains and vessels for safe and efficient travel across and under the bridge.

The current operating schedule for the bridge is set out in 33 CFR 117.253(b) (iv). The regulation was established in August 2004 and allows the bridge to be operated from a remote location, the Benning Yard office. The draw of the bridge shall open on signal under the following circumstances; at all times for public vessels of the United States, state and local government vessels, commercial vessels, and any vessel in an emergency involving danger to life or property; from May 15 through September 30, between 9 a.m. and 12 p.m., and between 1 p.m. and 6 p.m.; and from May 15 through September 30,

between 6 p.m. and 7 p.m. if notice is given before 6 p.m. on the day for which the opening is requested. At all other times, the bridge will open on signal if at least eight hours of notice is given.

The vertical clearance of the bridge is 5 feet at Mean High Water (MHW) in the closed position and 29 feet MHW in the open position. There are on average, 21 train transits across this bridge everyday and there have been two bridge openings in the past two years for vessels taller than five feet.

Concurrent with the publication of the NPRM, a test deviation [USCG_2011-0591] was issued to allow the CSX Railroad Bridge to test the proposed schedule and to obtain data and public comments. The test deviation allowed the bridge to open if at least 48 hours of notice is given, replacing the eight hour notice requirement. The test deviation continues to run until February 21, 2012.

The Coast Guard has reviewed bridge tender logs from before the test deviation and during the first 120 days of the entire 180 day test deviation. Before the deviation, the bridge had two bridge openings in the last two years for vessels over five feet tall. During the first 120 days of the 180 day test deviation there were no requests for a bridge opening.

The Coast Guard also reviewed the train logs before and during the first 120 day period of the entire 180 day test deviation. In both cases there was on average 21 train transits across this bridge daily.

Discussion of Comments and Changes

No comments were received on the proposed rule or the test deviation and no changes were made to the proposed rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The rule change is expected to have only a minimal impact on maritime traffic transiting under the bridge. The bridge will maintain its current operating regulation except that where there is currently an eight hour advance

notice requirement for a bridge opening there will be a 48 hour advance notice requirement. Mariners can plan their trips in accordance with the scheduled bridge opening advance notice requirement to minimize delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit under the bridge between October 1 and May 14 at all times and those needing to transit between the hours of 7 p.m. and 9 a.m. and from 12 p.m. to 1 p.m. between May 15 and September 30.

This action will not have a significant impact on a substantial number of small entities for the following

reasons: The rule adds minimal restrictions to the movement of waterway navigation by requiring vessels that are not essential public vessels, vessels with dangerous emergencies, or vessels transiting under the bridge at specified excluded times to give 48 hours of notice when requesting a bridge opening. Vessels that can safely transit under the bridge in the closed position may do so at any time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in the NPRM (SNPRM) we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply,

distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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 is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

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; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.253, revise paragraph (b) (1) (iv) to read as follows:

§ 117.253 Anacostia River.

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(b) * * *

(1) * * *

(iv) At all other times, if at least 48 hours of notice is given to the controller at the Benning Yard Office.

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Dated: February 29, 2012

WILLIAM D. LEE
Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District

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