



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2015-1011]

RIN 1625-AA09

Drawbridge Operation Regulation; Broad Creek, Laurel, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Norfolk Southern Railroad Bridge over Broad Creek, mile 8.0, at Laurel, DE. This proposed rule will change the current regulation requiring a four-hour advance notice and allow the bridge to remain in the closed position for the passage of vessels.

DATES: Comments and related material must reach the Coast Guard on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2015-1011 using Federal eRulemaking 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 Mrs. Jessica Shea, Fifth Coast Guard District (dpb), at (757) 398-6422, e-mail jessica.c.shea2@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
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The current operating schedule for the bridge is set out in 33 CFR 117.233 (a) issued September 11, 2006. As outlined in this regulation, the Norfolk Southern Railroad Bridge shall open on signal if at least four hours notice is given. The Fifth Coast Guard District Commander received a request from the bridge owner in July 2015 to consider making a permanent change to the operating regulation for the Norfolk Southern Railroad Bridge per 33 CFR 117.8(a). This proposed rulemaking aligns the new schedule with the observed lack of marine traffic that requires a bridge opening and the operating regulations for the Poplar Street and US Highway 13A, which also cross Broad Creek. The proposed change would amend the

existing regulation to state that the bridge need not open.

The Norfolk Southern Railroad Bridge over Broad Creek, mile 8.0, at Laurel, DE, has a vertical clearance of fourteen feet above mean high water in the closed position and is unlimited in the open position. The charted depth at the bridge is four feet. The existing structure is a swing bridge that was authorized in 1910. The structure has been used by trains since it was completed in 1915; however, the bridge owner reported that no openings have been requested since it was acquired by Norfolk Southern in 1999.

Milford Fertilizer had a dock that was used by commercial traffic upstream of the railroad bridge when the existing structure was issued a bridge permit in 1910. Prior to publishing this NPRM, the Coast Guard contacted the fertilizer company to determine if there would be any impacts to their operations. The fertilizer plant modified the operations conducted in this location and has not used the dock since the 1970s. There is no record of any other commercial maritime traffic on Broad Creek, DE. There are residential docks and municipal boat ramps downstream of the Norfolk Southern Railroad Bridge. Recreational traffic is present during the boating season with the peak during the summer months.

III. Discussion of Proposed Rule

This NPRM proposes to change the status of the Norfolk

Southern Railroad Bridge to need not open for the passage of vessels. In order to align the operating schedule of the bridge with observed marine traffic, the proposed change amends the regulation to state that the bridge need not open. The lack of requests from vessels for bridge openings since 1999 illustrate that the vessels that use this waterway can safely navigate while the drawbridge is in the closed-to-navigation position.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and E.O.s and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. Based on current

maritime traffic, using Norfolk Southern documentation and notes in the Coast Guard bridge files, there will be few, if any, vessels impacted by this proposed change as there has not been a requested opening since 1999.

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. While some owners or operators of vessels intending to transit the bridge may be small entities, since there have been no requests for openings since 1999, 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 E.O. 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have 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.

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. 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 eRulemaking 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, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this document, and all public comments, are 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. Revise §117.233(a) to read as follows:

§ 117.233 Broad Creek.

(a) The draw of the Norfolk Southern bridge at mile 8.0, at Laurel, need not open for the passage of vessels.

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Dated: January 14, 2016.

Stephen P. Metruck,

Rear Admiral, United States Coast Guard

Commander, Fifth Coast Guard District.

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