



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2016-0090]

RIN 1625-AA09

Drawbridge Operation Regulation; Youngs Bay, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operating schedule that governs the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay foot of Fifth Street at Astoria, OR. The Oregon Department of Transportation (ODOT) requested to change the operating schedule of the Old Youngs Bay Bridge for work on both bascule lifts. This change will allow ODOT to operate the double bascule draw in single leaf mode, one lift at a time, which will reduce the vertical clearance of the non-operable half of the span by five feet.

DATES: This temporary final rule is effective from 12 a.m. on June 16, 2016 through 11:59 p.m. on October 31, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0090 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 temporary final 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
E.O.	Executive order
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code
ODOT	Oregon State Department of Transportation
TFR	Temporary Final Rule

II. Background, Purpose and Legal Basis

The Coast Guard is issuing this temporary final rule (TFR) without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be unnecessary. This deviation is already in place and waterway users are already acting in accordance with the schedule with no actual or anticipated impacts. Additionally, in response to the initial request from the ODOT, the Coast Guard published a notice of deviation on February 3, 2016, 81 FR 6758, which temporarily changed the operating schedule of the Old Youngs Bay Bridge through June 15, 2016. The Coast Guard contacted known waterway users who indicated such a deviation would

have no significant impact. Therefore, it is unnecessary to provide an opportunity for notice and comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The ODOT owns and operates the Old Youngs Bay Bridge in accordance with 33 CFR 117.899(b). This bridge provides a vertical clearance approximately 19 feet above mean high water when in the closed-to-navigation position. ODOT is conducting bridge repairs, which are scheduled to be complete on October 31, 2016. In order to facilitate bridge repairs, one half of the double bascule bridge will have a containment system installed on the non-opening half of the span. This containment system will reduce the vertical clearance of the bridge by 5 feet, or 14 feet above mean high water. Both the previous notice of temporary deviation and this TFR allow the drawtender to open only half the draw span in single leaf mode.

Marine traffic on Youngs Bay consists of vessels ranging from small pleasure craft, sailboats, small tribal fishing boats, and commercial tug and tow, and mega yachts.

IV. Discussion of the Rule

We are amending 33 CFR section 117.899 to indicate that half of the double bascule span of the Youngs Bay Bridge will be opened instead of both spans once notice has been provided to the drawtender at the Lewis and Clark River Bridge. The draw span will be operable from 7 a.m. to 5 p.m. on weekdays and from 8 a.m. to 4 p.m. on weekends. This amendment will be in effect from 12 a.m. on June 16, 2016 through 11:59 p.m. on October 31, 2016, after which the bridge will be able to open both spans as before. The TFR is necessary to accommodate extensive maintenance and restoration efforts on the Old Youngs Bay Bridge. The TFR will allow

construction workers to complete bridge and highway upgrades before winter, while having minimal impact on maritime navigation.

V. Regulatory Analyses

We developed this 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. 12866 and E.O. 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 rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This regulatory action determination is based on the ability of the Old Youngs Bay Bridge to open half the span on signal.

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 will 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, for the reasons stated in section V.A above, this rule would 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 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 E.O. 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 E.O. 13132.

Also, this rule does not have tribal implications under E.O. 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.

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 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.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 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.

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; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.899, from 12 a.m. on June 16, 2016 through 11:59 p.m. on October 31, 2016, suspend paragraph (b) and add a paragraph (d).

The addition reads as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

* * * * *

(d) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay foot of Fifth Street, shall open half of the double bascule span on signal for the passage of vessels, if at least one half-hour notice is given to the drawtender, at the Lewis and

Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday and from 8 a.m. to 4 p.m. Saturday and Sunday through October 31, 2016. At all other times, including all Federal holidays, but Columbus Day, at least a two-hour notice by telephone is required. The opening signal is two prolonged blasts followed by one short blast.

R. T. GROMLICH
Rear Admiral, U. S. Coast Guard
Commander, Thirteenth Coast Guard District

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