



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: Final rule.

SUMMARY: The Coast Guard is changing the regulation that governs the operation of the Norfolk Southern Railroad Bridge over Broad Creek, mile 8.0, at Laurel, DE. This final rule changes the current regulation requiring a four-hour advance notice and allows the bridge to remain in the closed to navigation position. This final rule aligns the operating 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.

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 2015-1011 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 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 Information and Regulatory History

On February 3, 2016, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Broad Creek, Laurel, DE in the Federal Register (81 FR 5679). We received one comment on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The bridge owner, Norfolk Southern, made a request under 33 CFR 117.39 that the operating regulations be revised due to infrequent openings. The Norfolk Southern Railroad Bridge over Broad Creek, mile 8.0, at Laurel, DE, is a swing bridge that has a vertical clearance of fourteen feet above mean high water in the closed to navigation position and is unlimited in the open to navigation position.

Presently, the bridge opens with 4 hour advance notice in accordance with 33 CFR 117.233(a). This final rule changes the status of the Norfolk Southern Broad Creek railroad bridge to need not open for the passage of vessels. There have been no requests for openings from vessels since Norfolk Southern acquired the bridge in 1999. In order to align the

operating schedule of the bridge with observed marine traffic, this 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. Discussion of Comments, Changes and the Final Rule

One comment was made in response to the NPRM. The comment was in favor of the need not open status. There were no changes made to the final rule from what was proposed in the NPRM.

This rule changes the status of the Norfolk Southern Railroad Bridge to need not open for the passage of vessels. This action aligns the operating schedule of the bridge with the lack observed marine traffic that requires an opening and with the operating schedule for other drawbridges on this waterway. The change amends the regulation to state that the bridge need not open.

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 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 Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This regulatory action determination is based on the observed lack of marine traffic that requires a bridge opening.

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 comments 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.

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. As discussed in the NPRM, commercial traffic on Broad Creek, DE has not been present since the 1970s. The gradual change in the characteristics of the waterway shows that there will not be a significant economic impact of changing the drawbridge operating regulations on Broad Creek, DE.

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.

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 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 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 rule simply promulgates the operating regulations or procedures for drawbridges. This action is 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; and Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.233 to read as follows:

§ 117.233 Broad Creek.

The draws of the Norfolk Southern bridge, mile 8.0, the Poplar Street Bridge, mile 8.2 and the U.S. 13A Bridge, mile 8.25, all in Laurel, need not open for the passage of vessels.

Dated: May 18, 2016.

Meredith L. Austin,
Rear Admiral, United States Coast Guard,
Commander, Fifth Coast Guard District.
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