



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-1057]

RIN 1625-AA09

Drawbridge Operation Regulation; Norwalk River, Norwalk, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Metro-North WALK Bridge across the Norwalk River, mile 0.1, at Norwalk, Connecticut. The bridge owner submitted a request to require a greater advance notice for bridge openings and to increase time periods the bridge remains in the closed position during the weekday morning and evening rush hours. It is expected that this change to the regulations will create efficiency in drawbridge operations 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-2014-1057" 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 Mr. Christopher J. Bisignano, Supervisory Bridge Management Specialist, First Coast Guard District, Coast Guard; telephone (212) 514-4331 or e-mail Christopher.j.bisignano@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
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard twice published a notice of proposed rulemaking to adjust when the draw of the Metro-North WALK Bridge will be available to open Monday through Friday, excluding holidays. In response to comments received to the notice of proposed rulemaking (NPRM), published in August 2015 (80 FR 52423), the Coast Guard conducted further review of tidal data, bridge logs and train schedules.

On April 4, 2016, we published a supplemental notice of proposed rulemaking (*SNPRM*) entitled Drawbridge Operation Regulation; Norwalk River, Norwalk, CT, in the Federal Register (81 FR 19094), soliciting comments on the proposed rule through May 4, 2016. In addition, Commander (dpb), First Coast Guard District published Public Notice 1-150 dated April 4, 2016. We received two comments on the proposed rule, which will be addressed in Section IV, below.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 499.

The Metro-North WALK Bridge, mile 0.1, across the Norwalk River at Norwalk, CT, has a vertical clearance in the closed position of 16 feet at mean high water and 23 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR § 117.217(b). The waterway users are seasonal recreational vessels and commercial vessels of various sizes. The owner of the bridge, Connecticut Department of Transportation (CDOT), 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 Coast Guard believes these final changes balance the needs of rail and vessel traffic. The proposed changes enhance rail traffic without significantly impacting vessel traffic.

IV. Discussion of Comments, Changes and the Final Rule

We received two submissions commenting on the SNPRM. One comment requested that any modification to the existing rule should not be extended past the initiation of construction of a new replacement bridge. The Coast Guard disagrees. A replacement bridge is only in the planning stage at CDOT. Design and construction of a replacement project for a bridge of this scale typically takes several years. As the timeline of a potential bridge replacement is uncertain, the Coast Guard cannot consider it within this rulemaking.

One comment suggested the Coast Guard consider revising the AM peak window to end at 8:45 a.m. and revising the PM peak window to begin at 4:15 p.m. and end at 8:20 p.m. to better accommodate commuters. The Coast Guard believes that the proposed rule offers greater consideration to peak commuter train traffic by restricting bridge openings until 9:45 a.m. The Coast Guard also believes that the PM peak revision of the proposed rule more adequately addresses the concerns in the comment by offering an additional 15 minutes on the front end by restricting bridge openings starting at 4 p.m. In addition, while the train schedules do adjust twice annually, only one train crosses the bridge between 8 p.m. and 8:20 p.m. Therefore, the Coast Guard believes ending the restriction to bridge openings at 8 p.m. is sufficient. The proposed changes balance the needs of rail and vessel traffic, enhancing rail traffic without significant adverse impact to vessel traffic.

The Coast Guard amends 33 CFR § 117.217(b) as proposed in the SNPRM of April 4, 2016.

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 a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

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 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 that vessels can still transit the bridge given advanced notice. 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.

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 final 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 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 E.O. 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 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; Department of Homeland Security

Delegation No. 0170.1.

2. Revise § 117.217, paragraph (b), to read as follows:

§ 117.217 Norwalk River.

* * * * *

(b) The draw of the Metro-North “WALK” Bridge, mile 0.1, at Norwalk, shall operate as follows:

(1) The draw shall open on signal between 4:30 a.m. and 9 p.m. after at least a two hour advance notice is given; except that, from 5:45 a.m. through 9:45 a.m. and from 4 p.m. through 8 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessel traffic unless an emergency exists.

(2) From 9 p.m. through 4:30 a.m. the draw shall open on signal after at least a four hour advance notice is given.

(3) A delay in opening the draw not to exceed 10 minutes may occur when a train

scheduled to cross the bridge without stopping has entered the drawbridge lock.

(4) Requests for bridge openings may be made by calling the bridge via marine radio

VHF FM Channel 13 or the telephone number posted at the bridge.

Dated: June 23, 2016

S. D. POULIN
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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