



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0070]

RIN 1625-AA09

Drawbridge Operation Regulation; Elizabeth River, Elizabeth, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulations for five bridges across the Elizabeth River. These bridges were either removed in their entirety or replaced with a fixed bridge, making the operating regulations no longer necessary.

DATES: This rule is effective [INSERT 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-2017-0070 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. Jeffrey Stieb, Project Officer, First Coast Guard District Bridge Program, telephone 617-223-8364, e-mail Jeffrey.D.Stieb@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|-------------------------------|
| CFR | Code of Federal Regulations |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

The Coast Guard is issuing this final rule 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 an NPRM with respect to this rule because the New Jersey Transit Rail Operations railroad bridge, mile 0.7, the Baltic Street bridge, mile 0.9, the Summer Street bridge, mile 1.3, the South Street bridge, mile 1.8, and the Bridge Street bridge, mile 2.1 at the Elizabeth River that once required draw operations in 33 CFR 117.718(b), have been removed in their entirety or converted to a fixed bridge. Therefore, the regulation is no longer necessary or applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes restrictions that have no further use or value.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the FR. This rule merely requires an administrative change to the CFR in order to omit a regulatory requirement that is no

longer applicable or necessary. The modifications have already taken place and the removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

III. Legal Authority and Need for Rule

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

The New Jersey Transit Rail Operations railroad bridge, mile 0.7, the Baltic Street bridge, mile 0.9, the Summer Street bridge, mile 1.3, the South Street bridge, mile 1.8, and the Bridge Street bridge, mile 2.1, at the Elizabeth River that once required draw operations in 33 CFR 117.718(b) were removed in their entirety or converted to fixed bridges over thirty years ago. It has come to the attention of the Coast Guard that the governing regulation for these drawbridges was never removed subsequent to the removal of the drawbridge or conversion to a fixed bridge. The elimination of these drawbridges necessitates the removal of the drawbridge operation regulation in 33 CFR 117.718(b) that pertains to these former drawbridges.

The purpose of this rule is to remove 33 CFR 117.718(b), which refers to these bridges, from the CFR since the bridges are no longer able to be opened.

IV. Discussion of Final Rule

The Coast Guard is changing the regulation in 33 CFR 117.718 by removing restrictions related to the draw operations for bridges that are no longer drawbridges. The change removes paragraph (b) of the regulation governing these bridges. This change does not affect nor does it alter the operating schedule that is currently designated paragraph (a), which governs the remaining drawbridge on the Elizabeth River.

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 fact that these bridges either no longer exist or no longer operate as a drawbridge. The removal of the operating schedule from 33 CFR part 117, subpart B, will have no effect on the movement of waterway or land traffic.

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.

For the reasons stated in section IV.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 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.

§ 117.718 [Amended]

2. In § 117.718, remove paragraph (b) and redesignate paragraph (a) as an undesignated paragraph.

Dated: March 10, 2017.

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