



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0474]

RIN 1625-AA09

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Morrison Bridge across the Willamette River, mile 12.8, at Portland, Oregon. The temporary interim rule is necessary to accommodate Multnomah County's (bridge owner) unexpected extension of time required to replace the bridge decking. This temporary rule is necessary due to the amount of days requested by the bridge owner. The active deviation expires at the 180th day, and the Coast Guard does not approve back-to-back deviations.

DATES: This temporary interim rule is effective from 7 p.m. on September 27, 2017, through 7 p.m. on November 12, 2017.

Comments and related material must reach the Coast Guard on or before
[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments or view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0474 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

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 interim rule, call or e-mail Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; 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
FR	<i>Federal Register</i>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On June 23, 2016, we published a temporary deviation entitled *Drawbridge Operation Regulation; Willamette River, Portland, OR*, in the *Federal Register* (81 FR 40813), where we did not request comments. However, we conducted a public outreach in May 2016 and did not receive any objections. No complaints have been submitted during the current temporary deviation’s operation.

The Coast Guard is issuing this temporary interim 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 a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must modify the operation schedule of the bridge by September 27, 2017 to allow Multnomah County to replace the bridge decking, but we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

We are issuing this rule and under 5 U.S.C. 553(d)(3), and for the reasons stated above, the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the *Federal Register*.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the Morrison Bridge across the Willamette River, mile 12.8, at Portland, Oregon. The Morrison Bridge is a double bascule bridge. When the bascule span is in the closed-to-navigation position, the bridge provides 69 feet of vertical clearance, and in the open position provides unlimited vertical clearance. The normal operating schedule for the Morrison Bridge is in accordance with 33 CFR 117.897(c)(3)(iv). Multnomah County, the bridge owner, contacted us requesting additional time to deviate from the operating rule due to delays in receiving replacement parts, and needing to fabricate parts on site.

Multnomah County requested that the Morrison Bridge be allowed to only open half the span, 92 feet, as opposed to a full opening, 185 feet, to accommodate extra time to replace bridge decking. The County has also requested to reduce the vertical clearance of the non-opening side of the span with scaffolding erected 10 feet below the lower bridge cord for a containment system, and to require at least a two hour advance notice for an opening. Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Vessels able to pass through the Morrison Bridge in the closed position may do so at anytime. A tug will be on site to assist vessels through the single leaf span opening upon request. The bridge will be able to open half the span for emergencies with a two hour notice, and there is no immediate alternate route for vessels to pass.

IV. Discussion of the Temporary Interim Rule

The Coast Guard has issued a temporary interim rule from the operating schedule that governs the Morrison Bridge across the Willamette River, mile 12.8, at Portland, Oregon. The rule is necessary to accommodate Multnomah County's replacement of the bridge decking. This rule allows the bridge to only open half of the span, single leaf, to allow for the replacement of bridge decking. The rule also allows the vertical clearance to be reduced due to the project's containment system.

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 13771 directs agencies to control regulatory costs through a budgeting process. 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 (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the ability that vessels can still transit under the bridge, or give advanced notice for a half 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 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 IV.A above, this interim rule would not have a significant economic impact on any vessel owner or operator. Multnomah County has taken precaution to provide a tug to assist vessels, if needed, so businesses will not suffer any impacts. Furthermore, half the span can be opened to vessels that require an opening.

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.

We seek any comments or information that may lead to the discovery of a significant environmental impact from 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.

VI. 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, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this Temporary Interim Rule as being available in this docket and all public comments, will be 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 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 § 117.897, effective from 7 p.m. on September 27, 2017, through 7 p.m. on November 12, 2017, suspend paragraph (c)(3)(iv) and add paragraph (c)(3)(vi) to read as follows:

§ 117.897 Willamette River.

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(c) * * *

(3) * * *

(vi) Morrison Bridge, Portland, mile 12.8, shall operate in single leaf, and open half the draw on signal if at least two hours notice is given. The vertical clearance of the non-functioning leaf will be reduced up to 10 feet.

Dated: September 18, 2017.

David Throop,
Rear Admiral, U.S. Coast Guard,
Commander, Thirteenth Coast Guard District.
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