



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG-2017-0750]**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Pequonnock River, Bridgeport, CT**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Metro-North Peck Bridge across the Pequonnock River, mile 0.3, at Bridgeport, Connecticut. The owner of the bridge, Metro-North Railroad, has submitted a request that vessels seeking an opening of the draw submit a minimum of four hours of advance notice. It is expected this change to the regulations will better serve the needs of the public, particularly commuters and commercial interests utilizing the Northeast Corridor rail spur, while continuing to meet the reasonable needs of navigation.

**DATES:** 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 identified by docket number USCG-2017-0750 using Federal eRulemaking Portal at <http://www.regulations.gov>. 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 proposed rule, call or e-mail Mr. James Moore, Project Officer, First Coast Guard District, telephone 212-514-4334, email James.M.Moore2@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background, Purpose and Legal Basis**

The Metro-North Peck Bridge, mile 0.3, across the Pequonnock River at Bridgeport, Connecticut, has a vertical clearance of 26 feet at Mean High Water and 32 feet at Mean Low Water when the span is in the closed position. Vertical clearance is 65 feet when the draw is open. Horizontal clearance is 105 feet. Waterway users include recreational and a limited number of small commercial vessels.

The existing drawbridge regulation in 33 CFR 117.219(b) has been in effect since September 13, 2010. The owner of the bridge, Metro-North Railroad, requested a change to the drawbridge operating regulations in order to better facilitate the orderly flow of rail traffic while still satisfying the reasonable needs of navigation. Specifically, Metro-North Railroad seeks to modify the “open on signal” requirement associated with the existing regulation. Under the proposed rule, mariners would be expected to provide a minimum four hours advance notice if an opening is necessary. Additionally, the bridge owner requested to extend the allowable delay to an opening when a train is approaching the bridge. The bridge

is a component of the Northeast Corridor, which supports Metro-North, Amtrak and freight rail service. Of note, the bridge has not received any requests for an opening in the past four years; meanwhile, approximately 211 Metro-North commuter trains alone proceed across the bridge daily. It is reasoned that rail traffic will be able to proceed in a more expeditious and predictable manner if the draw of the bridge is not required to open on signal.

### **III. Discussion of Proposed Rule**

Bridge logs submitted for review by Metro North Railroad substantiate the bulk of bridge openings since 2015 have been undertaken for no more than test purposes. Over the course of the past decade the Pequonnock River has seen a marked decrease in the volume of commercial vessel traffic utilizing the waterway. There are presently no businesses located upstream of the bridge hosting either vessels and/or barges that would require an opening of the draw as a routine matter. Nor does it appear likely that planned development of the City of Bridgeport's waterfront will involve ventures requiring moorings for commercial vessels. Based on this evidence as well as discussion with the bridge owner, the Coast Guard proposes to permanently change the drawbridge operating regulation 33 CFR 117.219(b).

The proposed rule at 33 CFR 117.219(b) would allow the Metro-North Peck Bridge to open in the following manner: "The draw of the Metro-North Peck Bridge at mile 0.3, at Bridgeport, shall operate as follows: The draw shall open on signal between 5:45 a.m. to 9 p.m. if at least four hours advance notice is given; except that, from 5:45 a.m. to 9:45 a.m., and 4 p.m. to 8 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessel traffic unless an emergency exists. From 9 p.m. to 5:45 a.m., the draw shall open on signal if at least an eight hour notice is given. A delay in opening the draw not to exceed 15 minutes may occur when a train scheduled to cross the bridge without stopping

has entered the drawbridge block. Requests for bridge openings may be made by calling the telephone number posted at the bridge.”

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

##### **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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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.

The Coast Guard believes this rule is not a significant regulatory action. Mariners have not requested an opening of the draw for passage of a vessel within the past four years. Revision of the present regulation will allow for more efficient and economical operation of the span while still serving the reasonable needs of navigation based on present waterway usage trends. The minimum 26 feet of vertical clearance at mean high water when the bridge is in the closed position is sufficient to allow vessels utilizing the Pequonnock River to safety and expeditiously pass through the draw without 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

For the reasons states and Sections III and IV above, this proposed rule will not pose a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed 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 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 proposed 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 proposed rule does not have tribal implications under Executive Order 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

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 proposed rule will not result in such an 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.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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.

### **V. 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 NPRM 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 proposes to amend 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 § 117.219(b) to read as follows:

§ 117.219 Pequonnock River

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(b) The draw of the Metro-North Peck Bridge at mile 0.3, at Bridgeport, shall operate as follows:

- (1) The draw shall open on signal between 5:45 a.m. to 9 p.m. if at least four hours advance notice is given; except that, from 5:45 a.m. to 9:45 a.m., and 4 p.m. to

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. to 5:45 a.m., the draw shall open on signal if at least an eight hour notice is given.

(3) A delay in opening the draw not to exceed 15 minutes may occur when a train scheduled to cross the bridge without stopping has entered the drawbridge block.

(4) Requests for bridge openings may be made by calling the telephone number posted at the bridge.

Dated: September 22, 2017.

**S. D. Poulin,**

*Rear Admiral, U.S. Coast Guard,*

*Commander, First Coast Guard District.*

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