



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG 2018-0473]

RIN 1625-AA09

Drawbridge Operation Regulation; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Frederick Douglass Memorial Bridge across the Anacostia River, mile 1.2, in Washington, DC. This proposal is to allow the existing drawbridge to remain closed-to-navigation. This proposal is necessary to accommodate the construction of a new fixed bridge on an alignment 18 feet south of the existing drawbridge and the removal of the existing drawbridge.

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 2018-0473 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. Martin A. Bridges, Fifth Coast Guard District (dpb), telephone (757) 398-6422, e-mail Martin.A.Bridges@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The District of Columbia Department of Transportation, who owns and operates the Frederick Douglass Memorial Bridge, has requested a rule to allow the existing drawbridge to remain in the closed-to-navigation position during the construction of a new fixed bridge on an alignment 18 feet south of the existing drawbridge and the removal of the existing drawbridge.

The existing Frederick Douglass Memorial Bridge across the Anacostia River, mile 1.2, in Washington, DC, has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position. The current operating schedule for the existing drawbridge is published in 33 CFR 117.253 (a). The current rule will be replaced in its entirety.

On December 4, 2017, the Coast Guard signed Bridge Permit (2-17-5) authorizing the replacement of the existing drawbridge with a fixed bridge with a vertical clearance of 42 feet above mean high water on an alignment 18 feet south of the existing drawbridge. Issuance of the bridge permit followed a multi-year process involving completion of an environmental impact statement and Coast Guard Record of Decision; completion of a

navigation impact report; public meetings held on March 4, 2008, April 28, 2011, July 30, 2013, May 5, 2014, and January 22, 2015, and publication of a preliminary public notice for navigation on November 4, 2013, and public notice for the bridge permit application on October 20, 2017.

On February 2, 2018, we published a notice of deviation from drawbridge regulation entitled “Drawbridge Operation Regulation; Anacostia River, Washington, DC” in the *Federal Register* (83 FR 4845). The deviation is necessary to accommodate the construction and replacement of the existing Frederick Douglass Memorial Bridge with a fixed bridge on an alignment 18 feet south of the existing drawbridge. This temporary deviation allows the bridge to remain in the closed-to-navigation position during construction and is effective from 6 a.m. on February 2, 2018, through 6 a.m. on August 1, 2018.

This proposed modification of the operating schedule is designed to mitigate vehicular congestion and maintain public safety, and provide for safe, effective and efficient bridge construction and removal, while meeting the existing and future needs of navigation.

III. Discussion of Proposed Rule

The proposed rule will allow the drawbridge to be placed in the closed-to-navigation position, while a fixed bridge with a navigational clearance of 42 feet above mean high water on an alignment 18 feet south of the existing drawbridge is constructed, and during the removal of the existing drawbridge. Given the small difference in vertical clearances above mean high water between the existing drawbridge at 40 feet and new fixed bridge at 42 feet, placing the existing drawbridge in the closed-to-navigation should not restrict present navigation from transiting through the bridge. There have been no requests for an opening of the existing drawbridge since the temporary deviation published on February 2, 2018, with

the exception of vessels engaged in bridge construction and removal. There are no alternative routes and vessels able to transit under the existing drawbridge without an opening may do so.

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.

This is not considered a significant regulatory action. This determination is based on the findings that: (1) The potential impact is small given the limited number of vessels requiring a bridge opening over the past 10 years, with no requests since 2013; (2) the small difference in vertical clearances above mean high water between the existing drawbridge at 40 feet and new fixed bridge at 42 feet; and (3) vessels will be able to transit through the drawbridge following removal of the draw span, after the new bridge opens to vehicular 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 proposed rule would 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 rule will not have a significant economic impact on any vessel owner or operator. This rule is not expected to restrict present navigation from transiting through the bridge.

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 M16475.1 (series), 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 §117.253 (a) to read as follows:

§ 117.253 Anacostia River

- (a) The draw of the Frederick Douglass Memorial (South Capitol Street) bridge, mile 1.2, need not be opened for the passage of vessels.

* * * * *

Dated: June 25, 2018.

M. L. Austin,

Rear Admiral, U.S. Coast Guard,

Commander, Fifth Coast Guard District.

[FR Doc. 2018-15050 Filed: 7/12/2018 8:45 am; Publication Date: 7/13/2018]