



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0926]

RIN 1625-AA09

Drawbridge Operation Regulation; Hudson River, Albany and Rensselaer, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the CSX Transportation Bridge (alternatively referred to as the “Livingston Ave Bridge”) across the Hudson River, mile 146.2, between Albany and Rensselaer, New York. The bridge owner, National Railroad Passenger Corporation (Amtrak), submitted a request to allow the bridge to require four hours notice for bridge openings. This final rule would extend the notice required for bridge opening during the summer months due to the infrequent number of requests, and reduce burden on the bridge tender.

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-2017-0926 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 Miss Stephanie E. Lopez, Bridge Management Specialist, First Coast Guard District, telephone (212) 514-4335, e-mail Stephanie.E.Lopez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On August 10, 2018, the Coast Guard published a notice of proposed rulemaking entitled “Proposed Rule Drawbridge Operations: Hudson River, Albany and Rensselaer, New York” in the Federal Register (83 FR 39636). No comments were received on this rule.

III. Legal Authority and Need for Rule

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

The CSX Transportation Bridge (Livingston Ave) Bridge at mile 146.2, across the Hudson River, between Albany and Rensselaer, New York, has a vertical clearance of 25 feet at mean high water and 32 feet at mean low water. Vertical clearance is

unlimited when the draw is open. Horizontal clearance is approximately 98 feet.

The existing drawbridge regulation is 33 CFR 117.791(c). The existing regulation requires the draw of the Livingston Avenue Bridge to open on signal; except that, from December 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

The owner of the bridge, National Railroad Passenger Corporation, requested a change to the drawbridge operating regulations to allow the bridge owner to require 4 hours notice before the draw opens on signal between April 1 and December 15, 11 p.m. and 7 a.m. due to infrequent requests to open the bridge. This rule change will allow for more efficient and economical operation of the bridge while still meeting the needs of navigation.

Review of the bridge logs in the last three years between 11 p.m. and 7 a.m. from April 1 to December 15 shows that the bridge averages 24 openings during this period per year. The waterway users include recreational and commercial vessels including tugboat/barge combinations as well as tour/dinner boats.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided 60 days for comment and no comments were received. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

V. Discussion of Final Rule

The rule provides that from April 1 through December 15; between the hours of 7:00 a.m. and 11:00 p.m., the draw shall open on signal, and between the hours of

11:00 p.m. and 7:00 a.m., the draw shall open on signal if at least 4 hours notice is given. It is our opinion that this rule meets the reasonable needs of marine and rail traffic.

VI. 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 open the draw and transit the bridge given advanced notice. We believe that this change to the drawbridge operation regulations at 33 CFR 117.791(c) will meet the reasonable needs of navigation.

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.

The bridge provides 25 feet of vertical clearance at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridge will continue to open on signal for any vessel provided at least 4 hour advance notice is given.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section VI.A above, this rule will 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.

A preliminary Record of Environmental Consideration and a Memorandum for the Record 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.

2. Revise §117.791(c) to read as follows:

§ 117.791 Hudson River.

* * * * *

(c) The draw of the CSX Transportation Bridge, mile 146.2 between Albany and Rensselaer, shall open on signal; except that, from April 1 through December 15, from 11:00 p.m. to 7:00 a.m., the draw shall open on signal if at least 4 hours notice is given and from December 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

* * * * *

Dated: December 3, 2018.

A. J. Tiongson,
Rear Admiral, U.S. Coast Guard,
Commander, First Coast Guard District.

[FR Doc. 2018-28122 Filed: 12/26/2018 8:45 am; Publication Date: 12/27/2018]