



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-0131]

RIN 1625-AA09

**Drawbridge Operation Regulation; Youngs Bay and Lewis and Clark River,
Astoria, OR**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs three bridges in Astoria, OR: the US101 (New Youngs Bay) highway bridge (New Youngs Bay Bridge), mile 0.7 across Youngs Bay; the Oregon State (Old Youngs Bay) highway bridge (Old Youngs Bay Bridge), mile 2.4, across Youngs Bay; and the Oregon State (Lewis and Clark River) highway bridge (Lewis and Clark River Bridge), mile 1.0, across the Lewis and Clark River. This modification will remove the weekend bridge operator and allow the bridge to open during the weekend only after receiving a 2 hour advance notice.

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-2018-

0131 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 Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, 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	Federal Register
NPRM	Notice of proposed rulemaking
ODOT	Oregon Department of Transportation
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On December 20, 2018, we published a notice of proposed rulemaking entitled "Drawbridge Operation Regulation; Youngs Bay and Lewis and Clark River, Astoria, OR," in the Federal Register (83 FR 65326). This notice of proposed rulemaking was preceded by a six month test deviation published in the Federal Register (83 FR 9430) on March 6, 2018. We received two comments on this rule, though neither comment pertained to the operation or proposed schedule change of the three subject bridges.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. Youngs Bay provides no alternate route to pass around the three subject bridges.

The New Youngs Bay Bridge provides 39 feet of vertical clearance at mean high water, the Old Youngs Bay Bridge provides 24 feet of vertical clearance at mean high water, and the Lewis and Clark River Bridge provides 25 feet of vertical clearance at mean high water. The Oregon Department of Transportation (ODOT) owns and operates the three bridges. The three subject bridges operate per 33 CFR 117.899.

Due to infrequent drawbridge opening requests between Friday evening and Monday morning, ODOT has requested to remove the bridge operator and open the three subject highway bridges with a two hour advance notice during the weekend. This rule will remove the weekend bridge operator for the Lewis and Clark River Bridge that operates the New Youngs Bay Bridge, Old Youngs Bay Bridge and Lewis and Clark River Bridge. This rule reasonably accommodates waterway users while reducing ODOT's burden in operating the bridges.

Vessels operating on Youngs Bay and the Lewis and Clark River range from small recreational vessels, sailboats, tribal fishing boats and small commercial fishing vessels. Vessels able to pass through the subject bridges with the draw in the closed-to-navigation position may do so at any time.

IV. Discussion of Comments, Changes and the Final Rule

We provided a comment period of 30 days during the notice of proposed rulemaking and two comments were received. Neither comment was related to the schedule change for the test deviation or final rule. This rule modifies the operating schedule by removing the bridge operator from 5 p.m. Friday to 7 a.m. Monday. The New Youngs Bay Bridge, Old Youngs Bay Bridge and Lewis and

Clark River Bridge will require that a two-hour notice is given by telephone to ODOT. The phone number to use for a bridge opening is posted at the three subject bridges, and the Coast Guard will publish the phone number and this rule in the Local Notice to Mariners (LNM) for six months after the approval date. In addition to the LNM, the bridge operator's phone number will be added to the Coast Pilot. This rule amends 33 CFR 117.899 to provide specific requirements for the operation of the New Youngs Bay Bridge, the Old Youngs Bay Bridge and the Lewis and Clark River Bridge.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analysis 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 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 the bridge given advanced notice. This rule also applies to emergency openings.

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 would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit under the bridges may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owners or operators.

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 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. We have not received any comments for this rule change.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble. We have not received any comments for this rule change.

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 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 § 117.899 to read as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels if at least one half-hour notice is given to the draw tender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5 p.m. on Friday until 7 a.m. on Monday, and all Federal holidays except Columbus Day, the draw shall open on signal if at least a two-hour notice is given to the Oregon Department of Transportation (ODOT) by telephone. The opening signal shall be two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay foot of Fifth Street, shall open on signal for the passage of vessels if at least one half-hour notice is given to the draw tender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5 p.m. on Friday until 7 a.m. on Monday, and all Federal holidays except Columbus Day, the draw shall open on signal if at least a two-hour notice is given to ODOT by telephone. The opening signal shall be two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State (Lewis and Clark River) highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if at least one half-hour notice is given by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5 p.m. on Friday until 7 a.m. on Monday, and all Federal holidays except Columbus Day, the draw shall open on signal if at least a two-hour notice is given to ODOT by telephone. The opening signal shall be two prolonged blasts followed by four short blast.

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