



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2020-0603

RIN 1625-AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to modify the operating schedules that govern the new Route 7 Bridge, mile 3.1, crossing the Hackensack River, at Jersey City, NJ. The bridge owner, the New Jersey Department of Transportation (NJDOT), submitted a request to allow the bridge to require four hours advance notice for bridge openings. It is expected that this change to the regulations will create efficiency in drawbridge operations and better serve the needs of the community while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2020-0603 using the 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 Judy Leung-Yee, Project Officer, First Coast Guard District; telephone 212-514-4336, e-mail Judy.K.Leung-Yee@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
NJDOT	New Jersey Department of Transportation
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, Purpose and Legal Basis

The new Route 7 Bridge at mile 3.1 over the Hackensack River at Jersey City, New Jersey, is currently under construction and will have a vertical clearance of 70 feet at mean high water in the closed position and 135 feet at mean high water in the open position. Horizontal clearance is approximately 158 feet. The existing Route 7 Bridge over the Hackensack River has a vertical clearance of 35 feet at mean high water in the closed position and 135 feet at mean high water in the open position. Horizontal clearance is approximately 158 feet.

The waterway users include recreational and commercial vessels including tugboat/barge combinations.

The existing regulation, 33 CFR 117.723(k) published under Federal Register 85 FR 8747, effective April 19, 2020, requires the existing bridge open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge.

In August of 2020, the owner of the bridge, NJDOT, requested a change to the drawbridge operation regulations to the new bridge anticipating lower volume of bridge openings given that the new bridge vertical clearance in the closed position

will be double the clearance of the existing bridge.

Under this proposed rule the new draw would open on signal if at least four hours advance notice is given by calling the number posted at the bridge. This rule change will allow for more efficient and economic operation of the bridge while meeting the reasonable needs of navigation. The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 499.

NJDOT reached out to the maritime stakeholders with the requested change proposed and received no objections.

III. Discussion of Proposed Rule

The bridge logs show that the Route 7 Bridge had 16 openings in 2018, 10 openings in 2019, and 6 openings in 2020 (through 6/19/2020). The Coast Guard proposes to permanently modify the operating regulation.

The proposed rule would allow that the new Route 7 Bridge shall open on signal if at least four hours advance notice is given by calling the number posted at the bridge. Both new and current bridges will operate under the existing operating schedule until the original bridge is demolished/removed at which point this proposed rule will take effect.

It is the Coast Guard's opinion that the proposed rule meets reasonable needs of marine traffic.

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 Office of Management and Budget (OMB) has not reviewed the NPRM 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. The bridge will still open for all vessel traffic after a four-hour advance notice is given. The vertical clearance under the bridge in the closed position is relatively high enough to accommodate most vessel traffic. We believe that this proposed change to the drawbridge operation regulations at 33 CFR 117.723 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

The new Route 7 Bridge provides 70 feet of vertical clearance at mean high water that should accommodate most of the present vessel traffic except deep draft vessels. The new bridge will open on signal for any vessel when a four 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 IV.A, above, this proposed rule would not have 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, section. 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.

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, Rev.1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally,

such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this 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 e-Rulemaking 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 submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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; and Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.723, paragraph (k) to read as follows:

§ 117.723 Hackensack River.

(k) The draw of the Route 7 Bridge, mile 3.1, at Jersey City, shall open on signal if at least four hours advance notice is given by calling the number posted at the bridge.

Dated: November 12, 2020

T. G. Allan, Jr.
Rear Admiral, U.S. Coast Guard,
Commander, First Coast Guard District.

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