



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2024-0412]

RIN 1625-AA09

Drawbridge Operation Regulation; Hackensack River, Little Snake Hill, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Amtrak Portal Bridge across the Hackensack River, mile 5.0, at Little Snake Hill, New Jersey. This action is necessary to facilitate the construction of the new replacement Portal Bridge North, as designed by Amtrak as the owner of the bridge, adjacent to the current Amtrak Portal Bridge. This final rulemaking limits the extent of the opening of the Amtrak Portal Bridge in the horizontal position to prevent the swing span from striking the new Portal Bridge North during construction.

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 <https://www.regulation.gov>. Type the docket number (USCG-2024-0412) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Judy Leung-Yee, First Coast Guard District, Project Officer; telephone 212-514-4336, e-mail Judy.K.Leung-Yee@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
§	Section
U.S.C.	United States Code

II. Background, Information and Regulatory History

On October 3, 2024, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled Drawbridge Operation Regulation; Hackensack River, Little Snake Hill, NJ in the *Federal Register* (89 FR 80436). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended November 4, 2024, we received two comments, and those comments are addressed in Section IV of this Final Rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 499. The Amtrak Portal Bridge will continue to operate under its regular operating schedule found in 33 CFR 117.723(e), but there will be a difference in the horizontal clearance. Presently, the Amtrak Portal Bridge provides 88 feet horizontal clearance in the east channel and 91 feet horizontal clearance in the west channel. This rule allows the bridge to only open to 55 feet horizontal clearance in the east channel and the west channel will be closed to all navigation.

Construction on the new Portal Bridge North will prevent the existing Amtrak Portal Bridge from fully opening in the horizontal position in order to prevent the swing span from striking the new Portal Bridge North during construction. The construction will impact the Amtrak Portal Bridge for approximately 2 years, from March 3, 2025, to March 3, 2027 (estimated), after which the existing bridge will be demolished. The NPRM proposed that the restricted clearance would begin on February 1, 2025, however,

due to project delays, the restricted clearance will begin on or about March 3, 2025.

While this regulation will be effective 30 days after publication, the Bridge owner can still operate the bridge to its full opening until construction limits the horizontal opening.

There is one regular commercial waterway user that transits the Portal Bridge on an average of two to three round trips per week. There are also some recreational vessels that transit the bridge. The Coast Guard's review of the bridge logs in the last two years shows that bridge openings average 25 per month. Vessels narrower than 55 feet wide will still be able to transit through the narrower opening of the bridge. There are no other known commercial or recreational vessels that will be impacted by this rule.

IV. Discussion of Comments, Changes and the Final Rule

As noted in Section II of this preamble, the Coast Guard provided 30 days for comment regarding this rule and two comments in the docket were received. We provide a detailed discussion below in response to each comment in turn.

We received one comment from Towboat Harbor Carriers Association dated November 4, 2024. The comment letter (dated October 30, 2024) included the following four specific concerns:

Lack of Maritime Stakeholder Engagement During the Bridge Permitting Process: The commentor stated that the first public meeting regarding the Portal Bridge was not held until July 26, 2022. This was the first time the maritime industry was made aware that the replacement bridge plan that would limit vertical clearance, and that the engineering plan failed to identify that the location of the new bridge would impact the ability of the existing bridge to fully open.

Coast Guard Response: For clarification, this rule does not affect the vertical clearance of the bridge as implied in the comment above. Comprehensive maritime stakeholder engagement was conducted during a Marine Traffic Study conducted in 2006 to gather input regarding the vertical and horizontal clearance of the proposed fixed

bridge. Numerous maritime stakeholders were contacted during this study for input. After the conclusion of that study and consideration of the feedback, the Coast Guard widely disseminated a Public Notice on 6 April 2010 with the new bridge dimensions and proceeded with issuing a permit having received no negative comments regarding the vertical clearance of the bridge. The Coast Guard permitted the replacement of this bridge on June 6, 2013, based on a design provided by the bridge owner, Amtrak, and its accompanying environmental impact statement approved by the Federal Railroad Administration. Immediately upon being made aware in 2022 of the impact the new bridge's construction and design would have on the ability of the existing bridge to fully open, the Coast Guard facilitated maritime stakeholder outreach to fully assess impacts to navigation.

The Proposed Rule Unreasonably Impacts Marine Navigation: The commentor also stated that the proposed modification to the bridge fails to meet the reasonable needs of navigation because it forces mariners to transit through a reduced opening or under the bridge in the closed position..

Coast Guard Response: The location and design of the replacement bridge, coupled with the design and age of the current bridge, make it physically impossible to increase the horizontal opening of the current bridge during this phase of construction. Upon review, the Coast Guard identified only one vessel, a commercial tug and barge, that would be impacted by the proposed modification the bridge's operation. . The county municipality that owns the barge and transports the cargo successfully transported this cargo by land transportation between 2016 and 2022 and has shifted back to land transportation of the cargo recently in July 2024. The bridge owner investigated various methods of minimizing impacts on marine navigation and determined the proposed construction schedule best balanced impacts on marine transportation with impacts on the 150,000-200,000 daily train commuters who use the existing bridge. Based on the above

factors, the Coast Guard assessed that the temporary modification to the bridge's operating schedule meets the reasonable needs of maritime navigation. The Coast Guard will continue to work closely with all stakeholders to adequately understand and serve the needs of all transportation modes while meeting the reasonable needs of maritime navigation.

Port of New York and New Jersey Harbor Safety, Navigation and Operations

Committee Consultation: The commentor requested that the Committee be consulted on all bridge proposals.

Coast Guard Response: The Coast Guard has implemented this consultation as a standard practice for bridge proposals in the Port of New York and New Jersey and also allowed for public comment on the regulatory change through the published NPRM.

Bridge Owner Accountability to Avoid Conflicts During Construction: The commentor stated that bridge owners should take accountability for failure to avoid conflicts during construction and that affected parties be compensated for significant commercial losses incurred.

Coast Guard Response: The Coast Guard is not the bridge owner. However, when considering bridge actions, the Coast Guard promotes the maritime transportation goals of the Nation while accommodating, to the greatest extent practicable, the needs of all transportation modes. When conflicts arise during bridge construction that are unavoidable, the Coast Guard works with stakeholders across all transportation modes to best meet the needs of commerce in an equitable compromise of all interests.

We received a second comment from Vinik Marine Services, LLC dated November 4, 2024. The comment included the following two specific concerns:

Inadequate Notice/Approval of Bridge Plans: The commentor stated stating that full implications for navigation should have been clear and presented to stakeholders for

comment before permits were issued, and as construction progressed as there are impacts to navigation.

Coast Guard Response: Comprehensive maritime stakeholder engagement was conducted by the Coast Guard during a Marine Traffic Study conducted in 2006 to determine the vertical and horizontal clearance of the proposed fixed bridge. The Coast Guard considered this report in reviewing the constructability of the proposed bridge in the Public Notice issued on 6 April 2010. In 2016, the sole remaining commercial vessel regularly transiting through the bridge ceased operations when the municipality that owned the cargo shifted to land transportation. In 2022, that municipality shifted back to barge transportation, concurrent with the bridge owner notifying the Coast Guard that new bridge construction would impact the ability of the existing bridge to fully open. Immediately upon being made aware of the impact of new bridge construction on the ability of the existing bridge to be fully open, the Coast Guard facilitated maritime stakeholder outreach to fully assess impacts to navigation. The bridge owner hosted a public meeting for preconstruction on July 26, 2022, to present the project overview and construction schedule, including approximate time frame for channel closures and restrictions. In addition to regular outreach to impacted stakeholders as construction progressed, a second mariners' meeting was held on September 18, 2024, to prepare the stakeholders upcoming channel closures and restrictions.

Alternative Options Not Economically Feasible: The commentor stated that the option put forth in the Notice of Proposed Rulemaking to purchase a barge narrow enough to transit through the 55-foot bridge opening is not economically feasible. The commentor also stated that modifying a tugboat to transit underneath the bridge when closed is also not economically feasible.

Coast Guard Response: This comment is noted. The Coast Guard will continue to work closely with all stakeholders to adequately serve the needs of all transportation modes while meeting the reasonable needs of maritime navigation.

V. 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. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

Background information on the initial analysis of this action can be found in the NPRM, published October 3, 2024 (89 FR 80436). As noted in the NPRM, the location and design of the replacement bridge, coupled with the design and age of the current bridge, prevent operation of a commercial tug that tows a 70 feet wide barge because the 55-foot opening is too narrow for the barge to transit safely. The Coast Guard notes no evidence of this barge making transits since July of 2024, so the potential impact noted in the NPRM will not be realized.

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 received no comments from the Small Business Administration on this rulemaking. 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.

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

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.

This regulatory action determination is based on the ability that vessels can still transit the bridge given the reduced horizontal clearance. Background information for the Impact on Small Entities on this action can be found in the NPRM, published October 3, 2024 (89 FR 80436).

C. Collection of Information

This 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 Governments

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 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, or the relationship between the Federal Government and Indian tribes. If you believe this rule has implication 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 rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in the preamble.

F. Environmental

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, Environmental Planning Policy COMDTINST 5090.1 (series), which guide 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 rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

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. 00170.1. Revision No. 01.3

2. Revise § 117.723(e) to read as follows:

§ 117.723 Hackensack River

* * * * *

(e) The draw of the AMTRAK Portal Bridge, mile 5.0, at Little Snake Hill, New Jersey, shall only open to 55 feet horizontal clearance in the east channel and the west channel will be closed to all navigation. The draw need not open for the passage of vessel traffic from 5 a.m. to 10 a.m. and from 3 p.m. to 8 p.m. Additional bridge openings shall be provided for tide restricted commercial vessels between 7 a.m. and 8 a.m. and between 5 p.m. and 6 p.m., if at least a two-hour advance notice is given by calling the number posted at the bridge. At all other times the bridge shall open on signal

if at least a 2-hour advance notice is given.

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M. E. Platt

Rear Admiral, U.S. Coast Guard,

Commander, First Coast Guard District.

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