

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[Docket No. USCG-2008-0456]

RIN 1625-AA09

Drawbridge Operation Regulations; Harlem River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the bridges across the Harlem River at New York City, New York. This proposed rule would revise the drawbridge operation regulations removing redundant language and requirements that are no longer necessary.

DATES: Comments and related material must reach the Coast Guard on or before October 6, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-0456 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building ground floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

(4) *Fax:* (202) 493-2251.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668-7165.

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change, to <http://www.regulations.gov> and will include

any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0456), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and materials by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2008-0456) in the Search box, and click "Go>>." You may also visit either the Docket Management Facility in Room W12-140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or First Coast Guard District, Bridge Branch, One South Street, New York, NY 10004, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17,

2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The existing drawbridge operation regulations for the Harlem River lists the operating hours for eleven moveable bridges. The eleven moveable bridges across the Harlem River provide the following vertical clearances in the closed position:

The 103rd Street Bridge has a vertical clearance of 55 feet at mean high water, and 60 feet at mean low water in the closed position.

The 125th Street Bridge has a vertical clearance of 54 feet at mean high water and 59 feet at mean low water in the closed position.

The Willis Avenue Bridge has a vertical clearance of 24 feet at mean high water and 30 feet at mean low water in the closed position.

The Third Avenue Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Metro North Park Avenue Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Madison Avenue Bridge has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position.

The 145th Street Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Macombs Dam Bridge has a vertical clearance of 27 feet at mean high water and 32 feet at mean low water in the closed position.

The 207th Street Bridge has a vertical clearance of 26 feet at mean high water and 30 feet at mean low water in the closed position.

The two Broadway Bridges have a vertical clearance of 24 feet at mean high water and 29 feet at mean low water in the closed position.

The Spuyten Duyvil Bridge has a vertical clearance of 5 feet at mean high water and 9 feet at mean low water in the closed position.

The existing drawbridge operating regulations, listed at 33 CFR 117.789, require all the moveable bridges across

the Harlem River, except the Spuyten Duyvil Bridge, to open on signal from 10 a.m. to 5 p.m. after at least a four-hour notice is given to the New York City Highway Radio (Hotline) Room, and from 5 p.m. to 10 a.m. all the bridges, except the Spuyten Duyvil Bridge, need not open for vessel traffic.

The moveable bridges across the Harlem River, listed above, all provide at least 24 feet of vertical clearance in the closed position, except for the Spuyten Duyvil Bridge.

The Spuyten Duyvil Bridge is much lower in vertical clearance, and as a result, is required under the existing regulations to open on signal at all times for the passage of vessel traffic.

Discussion of Proposed Rule

Under the existing drawbridge operation regulations ten of the eleven moveable bridges listed do not open for vessel traffic between 5 p.m. and 10 a.m. each day.

The Spuyten Duyvil Bridge, which is much lower in vertical clearance than all the other bridges, is the only moveable bridge listed in the existing regulations that provides bridge openings at all times of the day.

The Coast Guard proposes to change the existing regulations to require the ten bridges in the existing regulations that do not normally open for vessel traffic between 5 p.m. and 10 a.m. to now open after at least a four-hour advance notice is given to the New York City Radio (Hotline) Room.

The Coast Guard believes that all bridges over navigable waterways should open for vessel traffic at any time either on signal or after an advance notice is given unless there is no existing navigation presently utilizing the waterway.

In addition, the language in existing regulations allowing public vessels of the United States to be passed through each bridge in this section as soon as possible will be removed because it is now required under 33 CFR 117.31, as part of the General Requirements for bridges.

Regulatory Analysis

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of

potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This proposed rule is not a significant regulatory action. This conclusion is based on the fact that vessel traffic will be able to obtain bridge openings 24 hours each day instead of the existing seven-hour window for bridge openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 section 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that vessel traffic will be able to obtain bridge openings 24 hours each day instead of the existing seven-hour window.

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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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, Commander (dpb), First Coast Guard District, Bridge Branch, One South Street, New York, NY 10004. The telephone number is (212) 668–7165. 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.

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).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1, and Commandant Instruction M16475.1D, 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 not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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(g); Department of Homeland Security Delegation No. 0170.1.

2. Section 117.789 is revised to read as follows:

§ 117.789 Harlem River.

(a) The draws of all railroad bridges across the Harlem River may remain in the closed position from the time a train scheduled to cross the bridge is within five minutes from the bridge, and until that train has fully crossed the bridge.

(b)(1) The draws of the bridges at 103 Street, mile 0.0, 125 Street (Triborough), mile 1.3, Willis Avenue, mile 1.5, Third Avenue, mile 1.9, Madison Avenue, mile 2.3, 145 Street, mile 2.8, Macombs Dam, mile 3.2, 207 Street, mile 6.0, and the two Broadway Bridges, mile 6.8, shall open on signal if at least a four-hour advance notice is given to the New York City Highway Radio (Hotline) Room.

(2) The draws of the Willis Avenue Bridge, mile 1.5, Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, need not open for the passage of vessel traffic at various times between 8 a.m. and 5 p.m. on the first Sunday in May and November. The exact time and date of each bridge closure will be published in the Local Notice to Mariners several weeks prior to each closure.

(c) The draw of the Metro North (Park Avenue) Bridge, mile 2.1, shall open on signal, except as provided in paragraph (a) of this section, if at least a 4-hour advance notice is given by calling the number posted at the bridge.

(d) The draw of the Spuyten Duyvil railroad bridge, mile 7.9, shall open on signal at all times, except as provided in paragraph (a) of this section.

Dated: July 28, 2008.

Dale G. Gabel,

*Rear Admiral, U.S. Coast Guard Commander,
First Coast Guard District.*

[FR Doc. E8–18175 Filed 8–6–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1030; FRL–8573–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Affirmative Defense Provisions for Malfunctions; Common Provisions Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Colorado on August 1, 2007. These revisions establish affirmative defense provisions for source owners and operators for excess emissions during periods of malfunction. The affirmative defense provisions are contained in the State of Colorado's Common Provisions regulation. The intended effect of this action is to approve only those portions of Colorado's Common Provisions regulation submitted on August 1, 2007 that relate to the affirmative defense for malfunctions. This action is being taken under section 110 of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a non-controversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Any written comments on this proposal must be received on or before September 8, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–1030, by one of the following methods: