

Dated: October 14, 2011.

**Michele M. Leonhart,**  
Administrator.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2011-0268]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Passaic River, Harrison, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has changed the drawbridge operation regulations that govern the operation of the Amtrak's Dock Bridge across the Passaic River, mile 5.0, at Harrison, New Jersey. The owner of the bridge has requested relief from crewing the bridge at all times because the bridge has received few requests to open during past years. It is expected that an advance notice requirement for bridge openings will provide relief to the bridge owner while continuing to meet the reasonable needs of navigation.

**DATES:** This rule is effective November 21, 2011.

**ADDRESSES:** Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0268 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0268 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge Branch, 617-223-8364, [john.w.mcdonald@uscg.mil](mailto:john.w.mcdonald@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On June 24, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations Passaic River in the **Federal Register** (76 FR 37039). We received no comments on the proposed rule. No public meeting was requested, and none was held.

### Basis and Purpose

The Amtrak Dock Bridge, mile 5.0, across the Passaic River at Harrison, New Jersey, has a vertical clearance in the closed position of 24 feet at mean high water and 29 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.739(e).

The existing drawbridge operation regulations require the draw to open on signal; except that, from 7:20 a.m. to 9:20 a.m. and 4:30 p.m. to 6:50 p.m., Monday through Friday, except Federal holidays, the draw need not be opened. At all other times, an opening may be delayed no more than ten minutes, unless the draw tender and the vessel operator, communicating by radio-telephone, agree to a longer delay.

The Coast Guard received a request from the National Railroad Passenger Corporation (Amtrak), the owner of the bridge, for relief from crewing the bridge at all times, because the bridge has received only eight requests to open during the past three years.

Amtrak requested that a twenty four hour advance notice be required for all bridge openings, except during the existing morning and afternoon closed periods.

As a result of the fact that the bridge has received only eight requests to open during the past three years, the Coast Guard believes it is reasonable for the bridge owner to require a twenty four hour advance notice for bridge openings and that doing so would continue to meet the reasonable needs of navigation.

### Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. As a result, no changes have been made to this final rule.

### Regulatory Analyses

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

### Executive Order 12866 and Executive Order 13563

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons:

The bridge has only received eight requests to open during the past three years. The bridge openings can still be obtained at any time, except the morning and afternoon closed periods, by providing at least a twenty four hour advance notice.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this 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 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This final rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge.

This final rule would not have a significant economic impact on a substantial number of small entities for the following reasons:

The bridge only received eight requests to open during the past three years. The bridge openings can still be obtained at any time, except during the Monday through Friday closed periods, by providing a twenty four hour advance notice.

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), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

### 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).

### 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 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 (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.

### Taking of Private Property

This rule will not cause 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 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 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 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.

### Energy Effects

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 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 concluded 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 is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

### 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; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.739, revise paragraph (e) to read as follows:

#### § 117.739 Passaic River.

\* \* \* \* \*

(e) The draw of the Amtrak Dock Bridge, mile 5.0, at Harrison, shall open on signal after at least a twenty-four hour advance notice is given by calling the number posted at the bridge; except that, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m., Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessel traffic. At all other times, a bridge opening may be delayed no more than ten minutes for the passage of rail traffic, unless the draw tender and the vessel operator agree to a longer delay.

\* \* \* \* \*

Dated: September 16, 2011.

**Daniel A. Neptun,**

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

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2011–0536]

RIN 1625–AA11

#### Regulated Navigation Area; Chelsea Street Bridge Construction, Chelsea, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule; clarification of comment period.