

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the rule is not expected to result in additional costs to the regulated industry.

*Unfunded Mandates*

The return of regulatory authority to the State of Missouri for those portions of the Missouri permanent regulatory program for which we are currently substituting Federal enforcement will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the nature of the action being taken.

**List of Subjects in 30 CFR Part 925**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 8, 2005.

**Chad Calvert,**

*Acting Assistant Secretary for Land and Minerals Management.*

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

[CGD13-05-023]

**RIN 1625-AA09**

**Drawbridge Operation Regulations; Willamette River, Portland, OR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the drawbridge operation regulations for bridges on the Willamette River, Oregon. This proposed revision would reorganize the text into a more understandable format

with minor editing of the regulations, and change the operating regulations for the draw of the Burnside Bridge across the Willamette River, mile 12.4, at Portland, Oregon. The proposed change to the Burnside Bridge operating regulation will enable the bridge owner to provide single-leaf operation of the bridge, except during the Rose Festival, to facilitate major structural and mechanical rehabilitation of the bridge. Repairs are currently expected to last approximately two years, after which it is expected that the operating regulation will be revised to provide for double-leaf operation again.

**DATES:** Comments and related material must reach the Coast Guard on or before October 21, 2005.

**ADDRESSES:** You may mail comments and related material to Commander (oan), 13th Coast Guard District, 915 Second Avenue, Seattle, WA 98174-1067 where the public docket for this rulemaking is maintained. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Aids to Navigation and Waterways Management Branch between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Chief, Bridge Section, 13th Coast Guard District, (206)220-7282.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13-05-023), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, 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.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Aids to Navigation and Waterways Management Branch 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 operating regulations currently in effect for the drawbridges on the Willamette River are at 33 CFR 117.897. The regulations as they are currently written are confusing as to which exceptions apply to which bridge. The reorganization of the text will simplify and clarify the regulations.

The proposed rule would also enable Multnomah County, the owner of the Burnside Bridge, to rehabilitate the structure. The work includes repairing the drawbridge mechanism, replacing the concrete deck and repairing corroded steel. One side would be disabled throughout the period. The operable side will be indicated via a Local Notice to Mariners.

The Burnside Bridge in the closed position provides 65.5 feet of vertical clearance above 0.0 datum according to the Corps of Engineers at the center of the bascule and 205 feet of horizontal clearance. Drawbridge openings are provided on average 40 times monthly for recreational vessels, tugs and tows, and floating construction equipment. This averages less than twice a day for opening frequency.

The current regulation provides that the spans need not open for the passage of vessels from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except New Years Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. From 8 a.m. to 5 p.m., Monday through Friday, one hour's notice is required for all openings of the upper deck of the Steel Bridge, the Burnside Bridge and the Morrison Bridge, and two hours notice is required at all other times for those 3 bridges. Notice at least 2 hours in advance is also required at all other times to open the draws of the Broadway and Hawthorne Bridges. The draw operates on signal during Rose Festival Week and whenever the river level reaches and remains above +12 feet.

**Reorganization of Text**

This proposed rule would reorganize the text of 33 CFR 117.897. Currently, the regulation is confusing as to which exceptions to normal bridge operations apply to which bridges. This change will enhance and facilitate comprehension of the regulation.

The conflict between the open period, from 8 a.m. to 5 p.m., and the closed periods, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., would be resolved by changing the open period hours to 9

a.m. to 6 p.m. Additionally, the bridge-specific sound signals would be deleted because they have not been used by mariners for years. The signal would default to the general sound signal of one prolonged blast followed by one short blast prescribed in 33 CFR 117.15.

The regulations covering the Union Pacific railroad bridge, mile 84.3, at Salem would be removed because, under a bridge permit amendment, the bridge has been converted to a fixed span and is therefore no longer an operating drawbridge.

### **Change of Burnside Bridge Operating Regulation**

This proposed rule would provide Multnomah County the opportunity to perform much needed maintenance by allowing it to operate only one leaf instead of two. During the Rose Festival, double-leaf openings would be provided. Recreational vessels should be able to easily pass safely through a single-leaf opening. Most recreational vessels do not require an opening of the draw. Tugs and tows may experience greater difficulty because of winds, currents, loading, etc. The bridge owner is offering an assist tug for such vessels if a request for this assistance is made at least 4 hours in advance. This offer is not embodied in this proposed rule.

Preliminary analysis indicates that most vessel operators will not be inconvenienced by the special operations. Large oceangoing vessels do not normally travel this far upstream on the Willamette and the majority of recreational vessels can pass the drawbridge without an opening. Tugs and tows are the most common vessels that would have to proceed with extra caution. There is a single frequent user of the drawspan. The Burnside Bridge is part of a heavily traveled commuter arterial that serves downtown Portland.

### **Regulatory Evaluation**

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

The Coast Guard reached this conclusion based on the fact that the

few substantive changes being made are very minor. Most vessels will be able to plan transits to avoid the closed periods. Most commercial vessel owners have indicated that they can tolerate the proposed hours by working around them.

### **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 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 proposed temporary change may affect some recreational sailboat owners insofar as they must plan their transits around the periods during which the bridges are closed to regain moorage above the drawbridges. We expect these to be few in number.

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 Austin Pratt, Chief, Bridge Section, at (206) 220–7282. 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.

### **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 will 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 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.

## 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 Information and Regulatory Affairs has not designated this 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 proposed rule under 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 there are no factors in this case that would limit the use of

a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no expected environmental consequences of the proposed action that would require further analysis and documentation.

## List of Subjects in 33 CFR Part 117

Bridges.

## Regulations

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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise section 117.897 to read as follows:

#### § 117.897 Willamette River.

(a) The draws of the Union Pacific railroad bridges, mile 119.6 at Albany; and mile 164.3 near Harrisburg, need not open for the passage of vessels. However, the draws shall be returned to operable condition within six months after notification by the District Commander to do so.

(b) The draw of the Oregon State highway bridge, mile 132.1 at Corvallis, shall open on signal if at least seven days notice is given. However, the draw need not be opened on Saturdays, Sundays, or Federal Holidays.

(c) The draws of the bridges listed in paragraph (c)(3) of this section shall open on signal if the specified advance notice is given, subject to the following requirements and exceptions:

(1) The draws need not open for the passage of vessels from 7 a.m. to 9 a.m.

and 4 p.m. to 6 p.m. every Monday through Friday; except that on New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, the draws shall open during those hours in accordance with the requirements of paragraph (c)(3) of this section.

(2) During Rose Festival Week or when the water elevation reaches and remains above +12 feet, no advance notice is required; except that the closed periods described in paragraph (c)(1) of this section apply.

(3)(i) Broadway Bridge, at Portland, mile 11.7. No advance notice is required. The closed periods described in paragraph (c)(1) of this section do not apply to oceangoing vessels of 750 gross tons or over.

(ii) Steel Bridge (upper deck only), at Portland, mile 12.1. From 9 a.m. to 4 p.m. Monday through Friday, notice must be given at least one hour in advance for draw openings. At all other times, notice at least two hours in advance is required.

(iii) Burnside Bridge, at Portland, mile 12.4. Only single-leaf openings will be provided, except that double-leaf openings will be provided during the Rose Festival. From 9 a.m. to 4 p.m. Monday through Friday, notice at least one hour in advance shall be given for draw openings. At all other times, notice at least two hours in advance is required.

(iv) Morrison Bridge, at Portland, mile 12.8. From 9 a.m. to 4 p.m. Monday through Friday, notice shall be given at least one hour in advance for draw openings. At all other times, notice at least two hours in advance is required.

(v) Hawthorne Bridge, Portland, mile 13.1. No advance notice is required.

Dated: August 8, 2005.

**Richard R. Houck,**

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

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