

Dated: November 13, 2003.

K.J. Eldridge,

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

[FR Doc. 03-29389 Filed 11-24-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-03-121]

RIN 1625-AA09

Drawbridge Operation Regulations; Mantua Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Mantua Creek at mile 1.4, in Paulsboro, New Jersey. The proposed rule would increase vessel openings and eliminate the need for a bridge tender by allowing the bridge to be operated by a train crewmember. This change will provide for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before January 26, 2004.

ADDRESSES: You may mail comments and related material to Commander (oan-b), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398-6222. The Commander (oan-b), Fifth Coast Guard District maintains the public docket for this rulemaking. 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 above address.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

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 (CGD05-03-121), 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 Commander, Fifth Coast Guard District 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

CONRAIL, who owns and operates this movable (swing-type) bridge, requested changes to the operating procedure for the drawbridge located at mile 1.4 across Mantua Creek, in Paulsboro, New Jersey. Currently, 33 CFR 117.729(a) requires the bridge to open on signal except, that from December 1 through March 1 the draw must open on signal at all times upon four hours notice.

In late spring of 2003, CONRAIL installed a Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the CONRAIL Railroad Bridge over Mantua Creek in Paulsboro, New Jersey. The new equipment allows a radio-controlled system controlled from the cab of the locomotive to operate the opening and closing of the swing span to vessels. This rule proposes to change the operating schedule by allowing the bridge to remain in the open position to vessels for nine months (March through November) and requiring four hours notice for vessel openings during December through February.

This change is being requested to make the closure process of the CONRAIL Railroad Bridge more efficient during train crossings and periodic maintenance. Additionally, it will save operational costs by eliminating bridge tenders while providing greater bridge operating capabilities.

Discussion of Rule

The Coast Guard proposes to revise 33 CFR 117.729(a), which governs the CONRAIL Railroad bridge at mile 1.4 across Mantua Creek in Paulsboro, New Jersey. Currently, the draw opens on signal except that from December 1 through March 1 the draw shall open on signal at all times upon four hours notice.

Paragraph (a) would contain the proposed rule for the CONRAIL Railroad Bridge, mile 1.4, at Paulsboro. The rule would allow the draw of the CONRAIL Railroad Bridge, mile 1.4, at Paulsboro, to be operated by a train crewmember. From March through November, the bridge would be left in the open position to vessels and would only close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

At all other times, the draw of the CONRAIL Railroad Bridge need only open on signal to vessels if at least four hours notice is given by calling (856) 231-2393.

From March through November and before the CONRAIL Railroad Bridge closes for any reason, an on-site train crewmember will assist in observing the waterway for approaching craft, which will be allowed to pass. The on-site train crewmember will then operate the bridge by control radiophone.

The CONRAIL Railroad Bridge would only be closed if the on-site train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

While the CONRAIL Railroad Bridge is moving from the full open position to the full closed position, the train crewmember will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. In the event of failure or obstruction, the train crewmember will stop and return the bridge to the full open position to vessels.

During span movement, the channel traffic lights would change from flashing green to flashing red, the horn will sound twice, and an audio voice warning device will announce bridge movement, then two repeat blasts of the horn until the bridge is seated and locked down. When the bridge is seated and locked down to vessels, the channel traffic lights will extinguish.

When the rail traffic has cleared, the horn will automatically sound five times to indicate that the draw of the CONRAIL Railroad Bridge is about to return to its full open position to vessels. During the open span movement, the channel traffic lights

would flash red, the horn will sound twice, followed by a pause, and then an audio warning device will announce bridge movement, then five repeat blasts of the horn until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will turn from flashing red to flashing green. After the train has cleared the bridge by leaving the track circuit, any delay in opening of the draw to vessels shall not exceed ten minutes except as provided in 33 CFR 117.31(b).

Regulatory Evaluation

This 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. We reached this conclusion based on the fact that the proposed changes for the CONRAIL Railroad Bridge regulation will provide for greater flow of vessel traffic than the current regulations of the drawbridge.

Under the current regulations, the CONRAIL Railroad Bridge remains closed and opens only on signal to vessels. The proposed regulation will require the bridge to remain in the open position for nine months of the year permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. From December through February, the draw shall open on signal if at least four hours advance notice is given by telephone at (856) 231-2393. This proposed regulation will provide for the reasonable needs of navigation.

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.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. The rule will provide for the CONRAIL Railroad Bridge to remain in the open position from March through November, allowing for the free flow of vessel traffic. The bridge would only close for the passage of trains and maintenance. From December through February, the draw shall open on signal to vessels if at least four hours notice is given by telephone at (856) 231-2393.

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 process. 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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398-6222.

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 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 security 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. We invite your comments on how this rule might impact tribal governments, even if that input may not constitute a "tribal implication" under the Order.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under 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 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 rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

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; 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. Section 117.729(a) is revised to read as follows:

§ 117.729 Mantua Creek.

(a) The draw of the CONRAIL Railroad Bridge, mile 1.4 at Paulsboro, shall operate as follows:

(1) From March through November, the draw shall be left in the open position to vessels and will only be closed for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(i) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

(ii) Before the bridge closes for any reason, an on-site train crewmember will observe the waterway for approaching craft, which will be allowed to pass. An on-site train crewmember will then operate the bridge by radiophone. The bridge shall only be closed if an on-site train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

(iii) While the CONRAIL Railroad Bridge is moving from the full open to the full closed position, an on-site train crewmember will maintain constant surveillance of the navigational channel to ensure no conflict with maritime traffic exists. In the event of failure or obstruction, the on-site train

crewmember will stop the bridge and return the bridge to the open position to vessels.

(iv) During closing of the span, the channel traffic lights will change from flashing green to flashing red, the horn will sound twice, and an audio voice warning device will announce bridge movement, then two horn blasts will be repeated and the bridge will close. When the bridge is seated and locked down to vessels, the channel traffic lights will extinguish. When the rail traffic has cleared the swing span, the horn will automatically sound five times to signal the draw of the CONRAIL Railroad Bridge is about to return to its full open position to vessels.

(v) During open span movement, the channel traffic lights will flash red, the horn will sound twice, followed by a pause, and an audio voice warning will announce bridge movement, then five repeated blasts until the bridge is in the full open position. In the full open position, the channel traffic lights will then turn from flashing red to flashing green.

(2) From December through February, the draw may be left in the closed position and opened on signal if at least four hours notice is given by telephone at (856) 231–2393.

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Dated: November 10, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–29388 Filed 11–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–029]

RIN 1625–AA00

Security Zones; San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish fixed security zones extending 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, in San Francisco Bay, California. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts.

Entry into these security zones would be prohibited, unless doing so is necessary for safe navigation, to conduct official business such as scheduled maintenance or retrofit operations, or unless specifically authorized by the Captain of the Port San Francisco Bay or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before January 26, 2004.

ADDRESSES: You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. 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 Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

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 (COTP San Francisco Bay 03–029), 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 that your submission 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 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 separate notice in the **Federal Register**.