

who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by August 20, 1995.

Dated: June 1, 1995.

**Ronald G. Chesemore,**

Associate Commissioner for Regulatory Affairs.

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD13-94-039]

RIN 2115-AE47

#### Drawbridge Operation Regulations; Lake Washington, Seattle, WA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to amend the regulations governing the operation of the Evergreen Point, State Route 520, floating drawbridge across Lake Washington at Seattle, Washington. The proposed rule would modify five different aspects of the existing operation regulations for the bridge including the notice period for requesting an opening; the length of weekday closed periods; the exemptions from weekday closed periods for Federal holidays and vessels greater than 2000 gross tons; and the requirement that non-self propelled vessels be towed through the draw. Through this action, the Coast Guard seeks to alleviate commuter traffic congestion on the bridge while continuing to meet the reasonable needs of navigation on Lake Washington.

**DATES:** Comments must be received on or before August 7, 1995.

**ADDRESSES:** Comments may be mailed to Commander (OAN), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220-7270).

### SUPPLEMENTARY INFORMATION:

#### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD13-94-039) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

#### Drafting Information

The principal persons involved in drafting this document are Austin Pratt, Project Officer, Aids to Navigation Branch, Thirteenth Coast Guard District, and Lieutenant Commander John C. Odell, Project Counsel, Thirteenth Coast Guard District Legal Office.

#### Background and Purpose

At the request of the Washington State Department of Transportation (WDOT), the Coast Guard is proposing to amend the drawbridge operation regulations for the Evergreen Point, State Route 520, floating bridge across Lake Washington at Seattle, Washington. The chief purpose of the proposed amendment is to alleviate commuter traffic congestion on the bridge while continuing to meet the reasonable needs of navigation.

In recent years vehicular traffic volumes on the bridge have increased dramatically while requests for openings of the drawspan have declined. State Route 520 is a major four-lane arterial in the Seattle area and is heavily traveled during daily commuting hours. Any opening of the drawspan during commuting hours would cause severe traffic congestion and back ups.

Most of the vessels on Lake Washington are able to pass under the bridge at its two fixed transition spans at either end of the floating segment. With the exception of a few tall-masted sailing vessels, floating construction equipment is the chief user of the drawspan. The predominant navigational use of Lake Washington is recreational.

In recent years, the drawspan has been under extensive repair and refurbishment. This work has required temporary changes to bridge operations. Since September 21, 1992, temporary regulations allowed WDOT to keep the drawspan closed except from 11 p.m. to 2 a.m. during the week and from 11 p.m. to 5 a.m. on weekends. From April 1, 1994, to October 1, 1994, the Coast Guard authorized WDOT to keep the drawspan closed at all times during the final phase of the repair project. Despite the highly restrictive nature of these temporary bridge operation regulations, no objections were received from entities representing commercial or recreational navigation on Lake Washington.

In order to alleviate roadway traffic congestion while continuing to meet the reasonable needs of navigation, the proposed amendment would modify five different aspects of the existing regulations:

First, the proposed amendment would increase the notice period for requesting openings from one hour to two hours. The bridge does not currently have continuous attendance by drawtenders, and in recent years, drawtenders have had difficulty getting to the bridge in time to make requested openings. This difficulty is the result of increased roadway traffic in the Seattle metropolitan area. The proposed increase in the notice period would give drawtenders sufficient time to arrive at the bridge for openings. This proposal would not seriously inconvenience navigation because vessel transits of the drawspan are infrequent and can be planned in advance by vessel operators.

Second, the proposed amendment would increase the period during which the drawspan may remain closed on weekdays. The existing drawbridge operation regulations at 33 CFR 117.1049(c) allow the bridge to remain closed from 6 a.m. to 10 a.m. and from 2 p.m. to 7 p.m. Monday through Friday. The proposed amendment would establish a single, yet substantially increased, closed period from 5 a.m. to 9 p.m. Monday through Friday. The proposed increase in the length of the weekday closed period is necessary to prevent the interruption of commuter traffic on the bridge. A bridge

opening during peak traffic hours can produce traffic gridlock on the bridge and its approaches, and openings during the workday must be avoided. The small number of openings requested in recent years and the nature of vessel traffic on Lake Washington indicates that the impact on commercial and recreational navigation from the increased closed period would be minimal.

Third, the proposed amendment would remove Columbus Day from the Federal holiday exemption to normal weekday closed periods. Under the existing Federal holiday exemption contained in 33 CFR 117.1049(c), the normal weekday closed periods do not apply on designated Federal holidays. Unlike other Federal holidays, Columbus Day enjoys no significant reduction in roadway traffic in the Seattle metropolitan area. This difference is due to the fact that most employers in the area do not observe Columbus Day. For this reason, commuter traffic volumes remain substantial on Columbus Day. Removal of Columbus Day from the federal holiday exemption would prevent the serious traffic congestion that would be caused by opening the drawspan during heavy commuter hours.

Fourth, the proposed amendment would remove the provision of 33 CFR 117.1049(c) that requires the drawspan to open during weekday closed periods in order to accommodate piledrivers and vessels greater than 2000 gross tons. In recent years the use of Lake Washington by vessels of this type and size has declined dramatically. Moreover, waters of Lake Washington in the area of the bridge do not form a restricted waterway, and the need for immediate openings for these larger and less maneuverable vessels is therefore less critical. Finally, the passage of such vessels can be planned in such a way as to avoid their arrival at the bridge during the weekday closed periods.

Fifth, the proposed amendment would remove the provision of 33 CFR 117.1049(d) requiring non-self-propelled vessels to be towed through the drawspan. The original purpose of this requirement was to avoid delays to roadway traffic caused by openings requested by vessels powered only by sail. The proposed increase in the length of the weekday closed periods would reduce the significance of such an event, and the possibility of such an event no longer needs to be specifically accounted for in the bridge operation regulations.

#### Discussion of Proposed Rule

The proposed rule would amend paragraphs (a), (c), and (d) of 33 CFR

117.1049. Paragraph (a) would be changed to require two hours notice for requesting an opening of the drawspan. Paragraph (b) would remain unchanged as it continues to provide accurate information about how to contact the operator for an opening. Paragraph (c) would be changed to specify a closed period from 5 a.m. to 9 p.m. Monday through Friday, except for all Federal holidays other than Columbus Day. This increased weekday closed period would apply on Columbus Day but would not apply on other designated Federal holidays. Paragraph (c) would also be changed to remove the requirement that the drawspan open during the weekday closed periods for piledrivers and vessels greater than 2000 gross tons. Paragraph (d) would be deleted, removing the requirement that vessels powered only by sail be towed through the drawspan.

#### Regulatory Evaluation

This proposal is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that most commercial navigation on Lake Washington can transit the bridge at its two fixed transition spans at either end of the floating segment. Moreover, commercial vessels can plan their transits so that they do not arrive at the bridge during weekday closed periods. Finally, transits of the drawspan by commercial vessels have become increasingly infrequent in recent years.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant effect on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons stated in the Regulatory Evaluation above, the Coast Guard expects the impact of this proposal to be

minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of COMDTINST M16475.B, the proposed regulation is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations 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; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.1049 is amended by revising paragraphs (a) and (c) and by removing paragraph (d) to read as follows:

##### § 117.1049 Lake Washington.

\* \* \* \* \*

(a) The draw shall open on signal if at least two hours notice is given.

\* \* \* \* \*

(c) The draw need not be opened from 5 a.m. to 9 p.m. Monday through Friday, except for all Federal holidays other than Columbus Day.

Dated: May 23, 1995.

**J.W. Lockwood,**

*Rear Admiral, U.S. Coast Guard, Commander,  
13th Coast Guard District.*

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## POSTAL SERVICE

### 39 CFR Part 265

#### Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Inspection Service Where the Postal Service or the United States Is Not a Party

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes to establish procedures for Postal Service employees within the Postal Inspection Service to respond to subpoenas, summonses, and court orders to produce records or give testimony in cases where the Postal Service is not a party. The purpose of this proposed rule is to minimize disruption of normal Postal Inspection Service functions caused by compliance with those demands, maintain control over release of public information, prevent the disclosure of information that should not legally be disclosed, prevent the Postal Service from being misused for private purposes, and otherwise protect the interests of the United States. These procedures would prohibit postal employees within or assigned to the Postal Inspection Service from complying with subpoenas, summonses, and other court orders in cases where the Postal Service is not a party unless authorized by certain authorizing officials.

**DATES:** Comments must be submitted on or before July 6, 1995. Comments will be available for public inspection until July 21, 1995.

**ADDRESSES:** Written comments should be mailed or delivered to James M. Parrott, Associate Counsel, Postal Inspection Service, United States Postal Service, 475 L'Enfant Plaza SW, Room 3411, Washington, DC 20260-2181.

Comments may be delivered to room 3411 at the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Copies of all written comments will be available for inspection and photocopying during these hours in room 3411.

**FOR FURTHER INFORMATION CONTACT:**  
James M. Parrott, Associate Counsel,  
Office of the Chief Postal Inspector,  
(202) 268-4417.

**SUPPLEMENTARY INFORMATION:** The proposed rule provides that postal employees within or assigned to the Postal Inspection Service must follow certain rules for the release of information in the form of documents or testimony. Giving testimony or releasing a document in legal proceedings where the Postal Service or the United States is not a party must be authorized beforehand. Employees within or assigned to the Inspection Service may comply with subpoenas, summonses, and court orders where the Postal Service or the United States is not a party, with the authorization of specified authorizing officials after consulting Inspection Service legal counsel. The release of the information must be in compliance with applicable laws and regulations and not be against the interests of the United States.

Several federal agencies have enacted regulations that give them the authority to control the release of documents and testimony in legal proceedings where the agency is not a party. Courts have recognized that federal agencies may limit compliance in these situations. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Additionally, subpoenas, summonses, and orders issued by state courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution. A federal regulation regarding compliance with those subpoenas reinforces this principle. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967).

This proposed rule does not apply to situations in which the United States, the Postal Service, or any federal agency is a party in action; Congressional requests, summonses, or subpoenas; consultative services and technical assistance rendered by the Inspection Service in the course of its normal functions; employees serving as expert witnesses; employees making appearances in their private capacity; and when it has been determined by an authorizing official that it is in the public interest.

Proposed new § 265.13 of title 39 of the Code of Federal Regulations will be the Postal Service regulation concerning the compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service or the United States is not a party. This section has also been written to reflect the changes in organization that the Inspection Service has undergone. As an example, the position of Regional Chief

Inspector no longer exists within the Inspection Service. Current regulations identify that official as responsible for authorizing testimony or the production of documents pursuant to a subpoena, summons, or court order where the Postal Service, the United States, or another federal agency is not a party. Now, the authorizing official, in most cases, is the Postal Inspector in Charge of the affected field Division.

#### List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Government employees, Release of information.

Accordingly, 39 CFR part 265 is proposed to be amended as set forth below.

#### PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

**Authority:** 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95-452, as amended), 5 U.S.C. App. 3.

2. The heading of § 265.11 is revised to read as follows:

##### **§ 265.11 Compliance with subpoena duces tecum, court orders, and summonses.**

3. Paragraphs (b) and (c) of § 265.11 are removed and paragraph (b) is reserved. A new § 265.13 is added to read as follows:

##### **§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.**

(a) *Applicability of this section.* These rules apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under § 447.23 of this chapter and under title 5, Code of Federal Regulations, part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;