

Proposed Rules

Federal Register

Vol. 69, No. 201

Tuesday, October 19, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-04-106]

RIN 1625-AA09

Drawbridge Operation Regulations; Connecticut River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to temporarily change the drawbridge operation regulations for the operation of the Route 82 Bridge, at mile 16.8, across the Connecticut River at East Haddam, Connecticut. This proposed rule would allow the bridge to operate on fixed opening schedule and permit several bridge closures from December 1, 2004 through March 31, 2006, to facilitate rehabilitation construction at the bridge. This work was previously scheduled last year to be in effect from November 1, 2002 through October 31, 2003. This work was postponed for one year due to project funding issues. This action is necessary to facilitate major rehabilitation of the bridge.

DATES: Comments must reach the Coast Guard on or before November 18, 2004.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District, Bridge 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 First Coast Guard District, Bridge

Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668-7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard finds that good reason exists for publishing an NPRM with a shortened comment period of 30 days. The shortened comment period will allow time to publish a final rule that will comply with notice requirements under 5 U.S.C. (d)(3) in time for work beginning on December 1, 2004, for bridge rehabilitation work.

The Coast Guard also believes this shortened comment period is reasonable because a notice of proposed rulemaking was previously published on September 10, 2002, for this same project with a similar opening schedule and no comments were received in response to that proposed rule.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-04-106), 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 if 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 First Coast Guard District, Bridge 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 Route 82 Bridge has a vertical clearance of 22 feet at mean high water,

and 25 feet at mean low water in the closed position. The existing drawbridge operating regulations listed at 33 CFR 117.205(c), require the bridge to open on signal at all times; except that, from May 15 to October 31, 9 a.m. to 9 p.m., the bridge is required to open for recreational vessels on the hour and half hour only. The bridge is required to open on signal at all times for commercial vessels.

The Route 82 Bridge was scheduled for major repairs in the summer of 2001, and again in 2002, but due to project funding shortfalls the work was delayed. Subsequent to that, the bridge has continued to deteriorate. Funding has now been made available and the necessary repairs need to be performed with all due speed to assure safe reliable continued operation of the bridge.

The bridge owner, Connecticut Department of Transportation, has requested a temporary rule to allow the bridge to open at specific times. Commercial vessels may obtain bridge openings at any time provided they provide a two-hour advance notice to the bridge tender.

The bridge owner has also requested additional closures which would restrict both recreational and commercial traffic. The requested dates include: one seven day bridge closure from March 21 through March 28, 2005; three 8-hour closures on October 18, 19 and 20, 2005; and one 24-hour closure on December 14, 2005.

The exact dates and times for the above closures may change slightly due to unforeseen issues. The Coast Guard will publish the exact times and dates in the Local Notice to Mariners at least thirty days in advance of the anticipated occurrence to assist mariners in their planning should the above dates and times change.

Under this proposed rule, in effect from December 1, 2004 through March 31, 2006, the Route 82 Bridge would operate as follows:

From November 1 through July 6, the draw shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily.

From July 7 through October 31, the draw shall open on signal Monday through Thursday at 5:30 a.m., 1:30 p.m., and 8 p.m. On Friday the draw shall open on signal at 5:30 a.m., 1:30 p.m., 8 p.m., and 11:30 p.m. On Saturday and Sunday the draw shall open on signal at 5:30 a.m., 8:30 a.m., 1:30 p.m., 4 p.m., 8 p.m., and 11:30 p.m.

At all times, other than during the closure periods identified above, the draw shall open on signal for commercial vessels provided at least a two-hour advance notice is given.

Discussion of Proposed Rule

This proposed change would amend 33 CFR § 117.205 by suspending paragraph (c) and adding a new temporary paragraph (d) that would list the temporary fixed bridge opening schedule for the Route 82 Bridge.

Additionally, the bridge owner has also requested closures which would restrict both recreational and commercial traffic. The requested dates include: one 7-day bridge closure from March 21 through March 28, 2005; three 8-hour closures on October 18, 19 and 20, 2005; and one 24-hour closure on December 14, 2005.

At all other times other than during the specified closure periods, the draw would open on signal at any time for commercial vessels provided at least a two-hour advance notice is given.

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 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.

This conclusion is based on the fact that vessel traffic will still be able to transit through the Route 82 Bridge under a fixed opening schedule that is expected to meet the reasonable needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 still be able to transit through the Route 82 Bridge under a fixed opening schedule that is expected to meet the reasonable needs of navigation.

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 (Public Law 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 us in writing at, Commander (obr), First Coast Guard District, Bridge Branch, 408 Atlantic Avenue, Boston, MA. 02110–3350. The telephone number is (617) 223–8364. 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 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 effect a taking of private property or otherwise have taking implications under E.O. 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 may 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 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 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 environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out 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. From December 1, 2004 through March 31, 2006, § 117.205 is temporarily amended by suspending paragraph (c) and adding a new paragraph (d) to read as follows:

§ 117.205 Connecticut River

* * * * *

(d) The draw of the Route 82 Bridge, mile 16.8, at East Haddam shall operate as follows:

(1) From November 1 through July 6 the draw shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily.

(2) From July 7 through October 31, Monday through Thursday, the draw shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m. On Friday the draw shall open on signal at 5:30 a.m., 1:30 p.m., 8 p.m., and 11:30 p.m. On Saturday and Sunday the draw shall open on signal at 5:30 a.m., 8:30 a.m., 1:30 p.m., 4 p.m., 8 p.m., and 11:30 p.m.

(3) The draw need not open for the passage of vessel traffic on the following dates: March 21, 2005 through March 28, 2005; October 18, 19 and 20, 2005; and December 14, 2005.

(4) At all times, other than the dates identified in paragraph (d)(3) of this section, the draw shall open on signal for commercial vessels provided at least a two-hour advance notice is given.

Dated: October 6, 2004.

David P. Pekoske,

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

[FR Doc. 04–23372 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7661]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The

respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT:

Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act.

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.