

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD13-04-047]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the operating regulations for the First Avenue South dual drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington. The proposed change would enable the bridge owner to keep the bridges closed during night hours for a 4-month period. This would facilitate painting the structure while properly containing debris and paint.

**DATES:** Comments and related material must reach the Coast Guard on or before March 22, 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, (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 [CGD13-04-047], 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 dual First Avenue South bascule bridges provide 32 feet of vertical clearance above mean high water for the central 100 feet of horizontal distance in the channel spans. When the drawspans are open there is unlimited vertical clearance for the central 120 feet of the spans. An adjacent, parallel bascule bridge was constructed and completed in 1999. Drawbridge openings are provided for recreational vessels, large barges, and floating construction equipment.

The operating regulations currently in effect for these drawbridges at 33 CFR 117.1041 provide that the spans need not open for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. Monday through Friday, except on all Federal holidays but Columbus Day. The draws must open at any time for a vessel of 5,000 gross tons and over, a vessel towing such a vessel or en route to take in tow a vessel of that size.

The proposed temporary rule would enable the bridge owner to paint the structure after preparing the surfaces of the steel truss beneath the roadway. All of this work must be accomplished within a containment system that permits no material to fall into the waterway. This containment system would have to be removed or partially dismantled for drawspan openings. Therefore, the bridge owner has requested periods in which the work may proceed without frequent interruption.

##### Discussion of Proposed Rule

This proposed rule would allow the bridge to remain closed to navigation from 9 p.m. to 5 a.m. Sunday through Friday from June 1 to October 1, 2005. One-hour notice would be required for openings during the currently established weekday closed periods discussed below.

Preliminary analysis indicates that most vessel operators will not be inconvenienced by the hours of temporary closure. Others would receive enough notice to plan trips at

other hours. Vessel traffic includes tugboats, barges, derrick barges, sailboats and motorized recreational boats including large yachts. The majority of vessels pass through the dual bascule spans during hours other than the proposed closure times.

First Avenue South is a heavily traveled commuter arterial that serves Boeing Company plants and other industrial facilities in south Seattle. Currently, the dual bascule spans need not open for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. Monday through Friday. Vessels of 5000 gross tons or more and vessels enroute to tow such vessels may request an opening at any time.

However, under this proposal, between June 1 and October 1, 2005, from Sunday to Friday, the draws need not be opened for the passage of any vessels from 9 p.m. to 5 a.m. Furthermore, Vessels of 5000 gross tons or more and vessels enroute to tow such vessels must provide one-hour notice for openings during the current weekday closed periods. Vessels of this size infrequently ply this reach of the waterway. The dual spans open an average of four times a day. Draw logs show that up to 25% of openings have happened during the proposed hours of closure. Many of these vessels could schedule movements to avoid these periods.

##### 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.

We reached this conclusion based on the fact that 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. Saturdays will enjoy normal operations, lessening inconvenience to sailboats.

##### 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 may affect some recreational sailboat owners insofar as they must return by 9 p.m. or wait until 5 a.m. 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. From 9 p.m. on June 1, 2005 to 5 a.m. on October 1, 2005, in (§ 117.1041, suspend paragraph (a)(1) and add a new paragraph (a)(3) to read as follows:

**§ 117.1041 Duwamish Waterway.**

(a) \* \* \*

(3) Monday through Friday, except all Federal holidays but Columbus Day, the draws of the First Avenue South Bridges, mile 2.5, need not be opened for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., except that the draw shall open on one-hour notice for vessels of 5000 gross tons or over, a vessel towing a vessel of 5000 gross tons and over, and a vessel proceeding to pick up for towing a vessel of 5000 gross tons and over. Sunday through Friday, the draws need not be opened for the passage of any vessels from 9 p.m. to 5 a.m.

\* \* \* \* \*

Dated: January 11, 2005.

**Jeffrey M. Garrett,**

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

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 81**

[NV-FOA-124; FRL-7862-3]

**Determination of Attainment for the Ozone and Carbon Monoxide National Ambient Air Quality Standards in Washoe County, NV**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the marginal one-hour ozone nonattainment area that includes all of Washoe County, Nevada has attained the 1-hour ozone National Ambient Air Quality Standard by the applicable attainment date (1993) and has continued to attain since that time. EPA is also proposing to determine that the moderate carbon monoxide nonattainment area that includes the Truckee Meadows area of Washoe County has attained the carbon monoxide National Ambient Air Quality Standard by the applicable attainment date (1995) and has continued to attain since that time. EPA is proposing this action to fulfill its obligations to make such determinations under sections 179(c), 181(b)(2), and 186(b)(2) of the Clean Air Act. The intended effect of this action will be to relieve the State of Nevada of the obligation to submit revisions to the State Implementation Plan to address additional requirements under the Clean Air Act for the next higher nonattainment classifications

and to satisfy one of the five statutory criteria for redesignation of these areas from nonattainment to attainment.

**DATES:** Any comment on this proposal must arrive by February 22, 2005.

**ADDRESSES:** Please address your comments to Eleanor Kaplan, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to [kaplan.eleanor@epa.gov](mailto:kaplan.eleanor@epa.gov), or submit comments at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Eleanor Kaplan, EPA Region IX at (415) 947-4147 or [kaplan.eleanor@epa.gov](mailto:kaplan.eleanor@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever “we”, “us”, or “our” are used, we mean the Environmental Protection Agency.

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**I. Background**

*A. What National Ambient Air Quality Standards (NAAQS) Are Considered in Today's Proposed Determination of Attainment?*

*Ozone.* Ozone is a gas composed of three oxygen atoms. It is not usually emitted directly into the air, but at ground level is created by a chemical reaction between oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) in the presence of heat and sunlight. Ozone has the same chemical structure whether it occurs miles above the earth or at ground level and can be

“good” or “bad,” depending on its location in the atmosphere. “Good” ozone occurs naturally in the stratosphere approximately 10 to 30 miles above the earth's surface and forms a layer that protects life on earth from the sun's harmful rays. In the earth's lower atmosphere, ground-level ozone is considered “bad.”

Ozone can irritate lung airways and cause inflammation much like a sunburn. Other symptoms include wheezing, coughing, pain when taking a deep breath, and breathing difficulties during exercise or outdoor activities. People with respiratory problems are most vulnerable, but even healthy people that are active outdoors can be affected when ozone levels are high.

Repeated exposure to ozone pollution for several months may cause permanent lung damage. Anyone who spends time outdoors in the summer is at risk, particularly children and other people who are active outdoors. Even at very low levels, ground-level ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis.

The 1-hour ozone NAAQS is 0.12 parts per million (ppm), one-hour average, not to be exceeded on average more than 1 day per year over any 3-year period. See 40 CFR 50.9 and appendix H.

*Carbon Monoxide.* Carbon monoxide (CO) is a colorless and odorless gas, formed when carbon in fuel is not burned completely. It is a component of motor vehicle exhaust, which contributes about 60 percent of all CO emissions nationwide. Nonroad vehicles account for the remaining CO emissions from transportation sources.

CO can cause harmful health effects by reducing oxygen delivery to the body's organs (like the heart and brain) and tissues. The health threat from lower levels of CO is most serious for those who suffer from heart disease, like angina, clogged arteries, or congestive heart failure. For a person with heart disease, a single exposure to CO at low levels may cause chest pain and reduce that person's ability to repeated exposures and may contribute to other cardiovascular effects.

Even healthy people can be affected by high levels of CO. People who breathe high levels of CO can develop vision problems, reduced ability to work or learn, reduced manual dexterity, and difficulty performing complex tasks. At extremely high levels, CO is poisonous and can cause death.

CO NAAQS are for 1-hour and 8-hour periods and are not to be exceeded more