

Dated: May 14, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD1-95-002]

RIN 2115-AE47

#### Drawbridge Operation Regulations; New Rochelle Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is changing the regulations governing the Glen Island Bridge, mile 0.8, across New Rochelle Harbor in New Rochelle. The change requires two hours advance notice for openings between the hours of 12 midnight and 6 a.m. from May 1 through October 31, and twenty-four hours advance notice between the hours of 8 p.m. and 8 a.m. from November 1 through April 30. This change was requested by the Westchester County Department of Parks because of the few requests for bridge openings during these time periods. This action relieves the bridge owner of the burden of having personnel constantly available to open the bridge and should provide for the reasonable needs of navigation. This change to the regulations will also require the bridge owner to install and maintain clearance gauges.

**DATES:** This final rule is effective June 19, 1998.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, Battery Park Bldg., New York, New York 10004-5073, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7069.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Arca, project officer, First Coast Guard District, Bridge Branch. The telephone number is (212) 668-7069.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On January 27, 1995, the Coast Guard published a notice of proposed rulemaking entitled "Drawbridge Operation Regulations; New Rochelle Harbor, NY" in the **Federal Register** (60 FR 5343). Ninety-eight comments

expressing opposition to the proposal were received. No public hearing was requested and none was held. Following revision of the regulation request by Westchester County, the Coast Guard, on May 13, 1996, published a supplemental notice of proposed rulemaking entitled "Drawbridge Operation Regulations; New Rochelle Harbor, New York" in the **Federal Register** (61 FR 22002). The Coast Guard received sixteen letters commenting on this supplemental notice of proposed rulemaking. No public hearing was requested, and none was held.

##### Background

The Glen Island Bridge has a vertical clearance of 13 feet above Mean High Water (MHW) and 20 feet above Mean Low Water (MLW) in the closed position. The bridge is presently required to open on signal. The new regulations will provide openings on signal with two hours advance notice between the hours of 12 midnight and 6 a.m. from May 1 through October 31, and twenty-four hours advance notice between the hours of 8 p.m. and 8 a.m. from November 1 through April 30.

From May 1994, through October 1994, there were thirty two bridge openings between midnight and 6 a.m. From November 1994, through April 1995, there were twenty openings between 8 p.m. and 8 a.m. The existing regulations are being changed to provide Westchester County relief from having an operator in constant attendance at the bridge since there is limited demand for bridge openings during the regulated periods.

##### Discussion of Comments and Changes

Sixteen comments were received in response to the supplemental notice of proposed rulemaking. One expressed no objection; one comment from Westchester County Department of Parks endorsed the proposal; fourteen comments objected to the proposal. Of those fourteen, eight objected because of the misconception that the bridge will not open for marine traffic and they will be forced to use the back for channel. The back channel is considered dangerous for nighttime passage due to the shallowness and narrowness of the channel and the lack of lighted aids to navigation. This concern is dispelled since the bridge will open when needed except an advance notice for openings will be required. Additionally, the waterway provides sufficient area for mariners to anchor nearby while waiting for an opening. Three objections expressed concern that approval of the request would lead to further encroachment on the full time operating

hours of the bridge. An approved request for change to operating regulations is not a valid basis for subsequent approval of additional changes. In the event that further changes are sought, if warranted the Coast Guard will reinitiate notice and comment rulemaking. All requests to change regulations are examined in light of the reasonable needs of navigation. One objection expressed concern that vessel appurtenances would have to be lowered. 33 CFR 117.11(a) requires that, "No vessel owner or operator shall (a) Signal a drawbridge to open if the vertical clearance is sufficient to allow the vessel, after all lowerable non-structural vessel appurtenances that are not essential to navigation have been lowered, to safely pass under the drawbridge in the closed position." Only those vessel appurtenances that are non-structural and non-essential to navigation have to be lowered in accordance with the law. One commentor requested installation of a marine radio at the bridge. Installation of marine radio is unnecessary since the waterway is strictly recreational and the majority of bridge openings are for sailboats most of which are not equipped with marine radio. Installation of a marine radio will not enhance marine safety and would be an unnecessary economic burden on the bridge owner. The final objection, from the Westchester County Board of Legislators, included a legislative resolution urging denial of the requested change by the Coast Guard based on the deterrent to criminal activity in the adjacent park offered by constant attendance on the bridge. Marine safety concerns were cited as well. Because of opposing views on the regulation change by two elements of Westchester County government, the Coast Guard requested, by letter dated February 26, 1997, that the County Executive reiterate the County's position. By letter March 20, 1997, the Commissioner of the Westchester County Department of Parks, on behalf of the County Executive indicated the County's continued desire to seek the proposed regulation change. A telephone conversation with Parks Commissioner DeSantis on 31 March 1997 provided further confirmation.

The infrequent requests for bridge openings during the regulated period and the ability to obtain bridge openings by providing advance notice makes the requested regulation change reasonable.

##### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs

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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This final rule adopts the operating hours which the Coast Guard believes to be appropriate since the recreational boaters that use this waterway seldom transit during night time and thus, a requirement for the bridge operator to be present during all time periods, is unwarranted. The Coast Guard believes this final rule achieves the requirement of balancing the navigational rights of recreational boaters and the needs of land based transportation.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdiction with populations of less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Federalism

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

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under Figure 2-1, paragraph 32(e), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because

promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is not required for this rule.

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

Bridges.

#### Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—[AMENDED]

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); § 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Add § 117.082 to read as follows:

#### § 117.802 New Rochelle Harbor.

(a) The draw of the Glen Island Bridge, mile 0.8, at New Rochelle, New York, shall open on signal, except as follows:

(1) two hours advance notice shall be given for openings from 12 midnight to 6 a.m. from May 1st through October 31st by calling the number posted at the bridge.

(2) twenty-four hours advance notice shall be given for openings from 8 p.m. to 8 a.m. from November 1st through April 30th by calling the number posted at the bridge.

(b) The owner of the bridge shall provide, and keep in good legible condition, clearance gauges with figures not less than twelve (12) inches high designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

Dated: May 6, 1998.

**R.M. Larrabee,**

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

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#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

[COTP SAN JUAN 97-045]

RIN 2115-AA97

#### SZ; San Juan Harbor, San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent moving safety zone around Liquefied Petroleum Gas (LPG) ships transiting the waters of San Juan Harbor, San Juan, Puerto Rico. Due to their highly volatile cargoes, size, draft, and the local channel restrictions, LPG ships require use of the center of these channels for safe navigation. These regulations are necessary for the protection of life and property on the navigable waters of the United States.

**DATES:** This rule becomes effective June 19, 1998.

**FOR FURTHER INFORMATION CONTACT:** LT Christopher K. Palmer, project officer, USCG Marine Safety Office San Juan, (787) 729-6800 x320.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

On February 6, 1998, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (63 FR 6142). One comment was received during the comment period.

#### Background and Purpose

LPG vessels make the three-hour transit through the waters of San Juan Harbor on the average of once a week. Historically, the Coast Guard has established a temporary moving safety zone each time an LPG ship transits the waters of San Juan Harbor. These vessels use the Bar, Anegado, and Army Terminal Channels enroute to either the Gulf Refinery Oil dock or the Catano Oil dock. Temporary moving safety zones are established for each transit because of the significant risks LPG ships present with their highly volatile cargoes, their size, draft, and the local channel restrictions which require that LPGs use the center of the channel for safe navigation. Given the recurring nature of these port calls, the dangers associated with LPG ships, and the need to provide for the safety of live on navigable waters during the arrival and departure of LPG ships, the Coast Guard is establishing a permanent moving safety zone around these vessels during their arrival and departure from San Juan Harbor, San Juan, Puerto Rico.

The safety zone will be established in an area one half mile around LPG ships entering or departing San Juan Harbor. Vessels will be prohibited from entering the safety zone while the vessel is transiting. The safety zone will be activated when the vessel is one mile north of San Juan Harbor #1 Sea Buoy, and will cease once the vessel is moored at either the Gulf Refinery Oil dock or the Catano Oil dock. The Coast Guard will assign a patrol, issue a Broadcast