

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-99-067]

RIN 2115-AE47

Drawbridge Operation Regulations;
Gowanus Canal, NY

AGENCY: Coast Guard, DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for four New York City bridges across the Gowanus Canal; the Ninth Street Bridge, at mile 1.4, the Third Street Bridge, at mile 1.8, the Carroll Street Bridge, at mile 2.0, and the Union Street Bridge, at mile 2.1, all in Brooklyn, New York. The bridge owner asked the Coast Guard to change the regulations to require a two-hour advance notice for openings. This action will relieve the owner of the bridge from the requirement to crew these bridges at all times by using a roving crew of drawtenders and still meet the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before June 26, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110-3350, 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 (617) 223-8364. 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: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

SUPPLEMENTARY INFORMATION:

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 (CGD-01-99-067), 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

Ninth Street Bridge

The Ninth Street Bridge, at mile 1.4, across the Gowanus Canal at Brooklyn,

has a vertical clearance of 5 feet at mean high water and 9 feet at mean low water. The existing operating regulations for the Ninth Street Bridge require the bridge to open on signal at all times.

Third Street Bridge

The Third Street Bridge, at mile 1.8, across the Gowanus Canal at Brooklyn, has a vertical clearance of 10 feet at mean high water and 14 feet at mean low water. The existing operating regulations in 33 CFR 117.787, require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open on signal after six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

Carroll Street Bridge

The Carroll Street Bridge, at mile 2.0, has a vertical clearance of 3 feet at MHW and 7 feet at MLW. The existing regulations require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open after a six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

Union Street Bridge

The Union Street Bridge, at mile 2.1, has a vertical clearance of 9 feet at MHW and 13 feet at MLW. The existing regulations require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open after a six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

The owner of all four bridges, the New York City Department of Transportation (NYCDOT), submitted bridge opening log data to the Coast Guard for review.

| | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
|---------------|------|------|------|------|------|------|------|------|------|
| Ninth | 864 | 984 | 927 | 836 | 0 | 0 | 0 | 0 | 423 |
| Third | 410 | 549 | 663 | 732 | 432 | 256 | 149 | 107 | 244 |
| Carroll | 517 | 627 | 669 | 704 | 432 | 245 | 142 | 114 | 228 |
| Union | 502 | 547 | 657 | 713 | 432 | 236 | 144 | 104 | 245 |

The bridge owner plans to operate these bridges with a roving crew of drawtenders. A review of the monthly breakdown of the opening data did not identify any months that had a significantly higher number of openings that would make the roving crew concept unworkable. The waterway users are all commercial vessels which operate year round. They presently provide a six-hour advance notice May

1 through September 30 at all the above bridges except the Ninth Street Bridge which is required to open on signal. The bridge owner has requested that all four bridges open after a two-hour advance notice is given year round. This advance notice requirement will allow the bridge owner to use a roving crew of drawtenders to operate these bridges. The Coast Guard believes this proposed rule is reasonable based upon the fact

that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the proposed two-hour notice during those five months. The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial vessel transits on Gowanus Canal are scheduled in

advance. Providing a two-hour notice for bridge openings for the additional seven months of the year, October 1 through April 30, should not prevent vessels from transiting the waterway in a timely manner. The reduction from six-hours advance notice to two-hours advance notice during the remaining five months of the year, May 1 through September 30, should make vessel transits easier to schedule during that time period. This proposed rule is expected to relieve the bridge owner of the burden of crewing each bridge continually, establish a consistent bridge operating schedule for the bridges listed in this rulemaking, and still meet the reasonable needs of navigation.

Discussion of Proposal

The Coast Guard proposes to revise the operating regulations for the Gowanus Canal at 33 CFR 117.787 as follows:

Ninth Street Bridge

Add operating regulations for the Ninth Street Bridge, mile 1.4, Across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Third Street Bridge

Revise the operating regulations for the Third Street Bridge, mile 1.8, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Carroll Street Bridge

Revise the operating regulations for the Carroll Street Bridge, mile 2.0, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Union Street Bridge

Revise the operating regulations for the Union Street Bridge, mile 2.1, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Notice for bridge openings shall be given to the NYCDOT Hotline or NYCDOT Bridge Operation Office.

The bridge owner plans to use two crews of drawtenders to operate the Gowanus Canal bridges. The use of two crews is expected to provide bridge openings in a timely manner. The Hamilton Avenue Bridge, mile 1.2, also across Gowanus Canal was not included in the roving drawtender plan because the frequency of bridge openings were considerably higher than the other bridges on this waterway.

Regulatory Evaluation

This proposed 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 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 Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect 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 conclusion is based upon the fact that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the proposed two-hour notice during those five months. The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial vessel movements on Gowanus Canal are scheduled in advance by the commercial operators. Providing two-hours notice for bridge opening for the additional seven months of the year, October 1 through April 30, should not prevent vessels from still transiting the waterway in a timely manner.

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), for reasons discussed in the Regulatory Evaluation section above, that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the proposed two-hour notice during those five months. The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial

vessel transits on Gowanus Canal are scheduled in advance by the commercial operators. Providing two-hours notice for bridge openings for the additional seven months of the year, October 1 through April 30, when the bridge formerly opened on signal, should not prevent vessels from still transiting the waterway in a timely manner.

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.

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

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect 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 does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

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; 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 117.787 is revised to read as follows:

§ 117.787 Gowanus Canal.

The draws of the Ninth Street Bridge, mile 1.4, the Third Street Bridge, mile 1.8, the Carroll Street Bridge, mile 2.0, and the Union Street Bridge, mile 2.1, at Brooklyn, shall open on signal if at least a two-hour advance notice is given to either the New York City Department of Transportation (NYCDOT) Radio Hotline or the NYCDOT Bridge Operations Office.

Dated: April 12, 2000.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.
[FR Doc. 00-10454 Filed 4-26-00; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 414

HCFA-1084-P

RIN 0938-AJ82

Medicare Program; Payment for Upgraded Durable Medical Equipment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicare regulations to permit Medicare suppliers to furnish upgraded durable medical equipment (DME) on an assignment basis. Medicare payment would be made to the supplier as if the DME were non-upgraded DME; and the beneficiary purchasing or renting the upgraded DME would pay the supplier an amount equal to the difference between the supplier's charge for the DME upgrade and the amount paid by Medicare for the non-upgraded DME. This proposed rule would also require the following consumer protection safeguards: determination of fair market prices, proof of full disclosure of the availability and cost of non-upgraded DME, and sanctions against suppliers who engage in coercive or abusive sales practices.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 26, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-1084-P, P.O. Box 8013, Baltimore, MD 21244-8013.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses (If you choose to mail your comments to one of the following addresses, we may be delayed receiving them, which could result in us considering those comments late.):

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or
Room C5-16-03, 7500 Security Boulevard, Baltimore, MD

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1084-P. Comments received timely will be available for public

inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443-G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

FOR FURTHER INFORMATION CONTACT:

William Long, (410) 786-5655.

SUPPLEMENTARY INFORMATION:

I Background

A. Durable Medical Equipment

Durable medical equipment (DME) is medical equipment furnished by a supplier or a home health agency that is primarily and customarily used to serve a medical purpose. DME is able to withstand repeated use and is generally not useful to an individual in the absence of a sickness or an injury. To be covered by Medicare, DME must be appropriate for use in a beneficiary's home or in an institution that is used as a home. A hospital, or a critical access hospital may not be considered an institution that is used as a home for this purpose. Similarly, a Medicare-certified SNF or other institution that is primarily engaged in providing skilled care to its residents may not be considered an institution that is used as a home.

While Medicare will pay for DME that is adequate and effective to meet the medical needs of the beneficiary, it will not pay extra for convenience or luxury features nor more than the applicable fee schedule amount.

B. Payment for DME

Payment for DME furnished under Part B of the Medicare program (Supplementary Medical Insurance) is made through contractors known as Medicare carriers. Section 1834(a) of the Social Security Act (the Act) provides that Medicare payment for DME is equal to 80 percent of the lesser of the actual charge for the DME or the fee schedule amount for the DME. Section 1834(a) of the Act classifies DME into the following payment categories:

- Inexpensive or other routinely purchased DME.
- DME requiring frequent and substantial servicing.
- Customized DME.
- Supplies and accessories used with DME
- Oxygen and oxygen equipment.
- Other items of DME (capped rental items).

There is a specific methodology for determining the fee schedule payment amount for each category of DME. In addition, for each of these categories there are restrictions governing