

The words “which will include all domestic and foreign articles furnished for the repairs or alterations” in § 10.8(d) and the words “which will include all domestic and foreign articles used in the processing” in § 10.9(d) were added to those regulatory provisions by T.D. 72–119, which was published in the **Federal Register** on May 2, 1972 (37 FR 8867). Neither T.D. 72–119 nor the notice of proposed rulemaking (published in the **Federal Register** on May 4, 1971 (36 FR 8312)) which preceded the T.D. included any explanation or discussion regarding the above-referenced language added to §§ 10.8(d) and 10.9(d). However, the addition of this language has had the effect of requiring the value of U.S.- and foreign-origin parts used in the foreign repairs, alterations, or processing to be included in the dutiable value of articles entered under subheadings 9802.00.40, 9802.00.50, and 9802.00.60, HTSUS.

Explanation of Amendments

As indicated in the above background discussion, there is nothing in the underlying statutory provisions (subheadings 9802.00.40, 9802.00.50, and 9802.00.60 and U.S. Note 3(a), subchapter II, Chapter 98, HTSUS) that mandates the inclusion of the value of U.S.-origin parts in the dutiable value of articles entered under these tariff provisions. The policy of requiring the value of U.S.-origin parts to be included in dutiable value under these circumstances, as reflected in the implementing regulations, clearly provides no incentive to use U.S., as opposed to foreign, parts in the foreign repairs, alterations, or processing. In order to encourage the use of U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under subheading 9802.00.40, 9802.00.50, and 9802.00.60, CBP is proposing to amend §§ 10.8(d) and 10.9(d) by removing the words “domestic and” in the second sentence of each of these regulatory provisions.

This document also proposes to edit §§ 10.8(d) and 10.9(d) by replacing the word “shall” each place it appears with the word “will”.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed rule would have the effect of excluding the value of U.S.-origin parts from the dutiable value of articles entered under subheadings 9802.00.40,

9802.00.50, and 9802.00.60, HTSUS, thereby providing an incentive to use U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under these HTSUS provisions. As a result, it is expected that the proposed amendments will have the potential of providing a slight economic benefit for U.S. commercial interests. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference Programs, Reporting and recordkeeping requirements, Shipments.

Proposed Amendments to the Regulations

It is proposed to amend part 10 of the CBP Regulations (19 CFR part 10) as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§ 10.8 [Amended]

2. In § 10.8, paragraph (d) is amended by removing the word “shall” each place it appears and adding, in its place, the word “will”, and by removing the words “domestic and” in the second sentence.

§ 10.9 [Amended]

3. In § 10.9, paragraph (d) is amended by removing the word “shall” each place it appears and adding, in its place, the word “will”, and by removing the

words “domestic and” in the second sentence.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

Approved: March 10, 2009.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0073]

RIN 1625–AA09

Drawbridge Operation Regulation; Perquimans River, Hertford, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operation regulations of the US17 Bridge, at mile 12.0, across Perquimans River at Hertford, NC. This proposal would allow the drawbridge to operate on an advance notice basis during specific times of the year. The proposed change would result in more efficient use of the bridge during months of infrequent transit.

DATES: Comments and related material must reach the Coast Guard on or before April 27, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2009–0073 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Sandra S. Elliott, Bridge

Management Specialist, Fifth Coast Guard District, at (757) 398-6557. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0073), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger

than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, 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.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2009-0073) in the Search box, and click "Go>>." You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays or at Commander (dph), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR

19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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 North Carolina Department of Transportation (NCDOT) is responsible for the operation of the US17 Bridge, at mile 12.0, across Perquimans River at Hertford, NC. NCDOT requested advance notification for vessel openings during specific times of the year due to the infrequency of requests for vessel openings of the drawbridge.

The US17 Bridge has a vertical clearance of three feet above mean high water in the closed-to-navigation position. The existing operating regulation is set out in 33 CFR 117.835, which requires the draw to open on signal from 8 a.m. to midnight from April 1 through September 30, and from 10 a.m. to 10 p.m. from October 1 through March 31. The draw need not be opened at all other times.

Bridge opening data, supplied by NCDOT, revealed a significant decrease in yearly openings. In the past three years from 2006 to 2008, the bridge opened for vessels 363, 451 and 266 times, respectively. (See Table A)

Table A

BRIDGE OPENINGS FOR 2006

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
15	4	12	18	59	46	59	37	39	23	35	16

BRIDGE OPENINGS FOR 2007

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
12	10	14	18	34	79	94	50	45	42	17	36

BRIDGE OPENINGS FOR 2008

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
9	12	22	26	13	23	76	18	26	20	14	7

Most of the businesses that previously brought materials in via barges through this drawbridge have ceased to operate or they are utilizing different forms of

transportation to move their materials. As such, this dramatic decrease in waterway traffic has resulted in much less frequent openings of the draw itself.

Due to the anticipated infrequency of requests for vessel openings of the drawbridge, NCDOT requested to change the current operating regulation

by requiring the draw of the bridge to open on signal from May 1 to September 30 from 8 a.m. to 10 p.m., and from October 1 to April 30 from 10 a.m. to 8 p.m., if two hours notice is given. The draw need not be opened at all other times.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.835, by revising the paragraph to read that the draw of the US17 bridge, mile 12.0 at Hertford, NC, shall open on signal from 8 a.m. to 10 p.m. from May 1 through September 30; and from 10 a.m. to 8 p.m. from October 1 through April 30, if two hours notice is given. The draw need not be opened at all other times.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the proposed scheduled bridge openings, to minimize delays.

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 proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the proposed scheduled bridge openings can minimize delay.

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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. 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 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 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 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 Department of Homeland Security Management Directive 0023.1 and 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 made a preliminary determination that this is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 32(e), of the Instruction because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

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; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.835 to read as follows:

§ 117.835 Perquimans River

The draw of the US17 Bridge, mile 12.0, at Hertford, NC shall open on signal from 8 a.m. to 10 p.m. from May 1 through September 30; and from 10 a.m. to 8 p.m. from October 1 through April 30, if two hours notice is given. The draw need not be opened at all other times.

Dated: February 17, 2009.

Fred M. Rosa, Jr.,

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

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PRESIDIO TRUST

36 CFR Part 1012

Legal Process: Testimony by Employees and Production of Records

AGENCY: Presidio Trust.

ACTION: Proposed Rule.

SUMMARY: The Presidio Trust proposes a regulation, limited to the Presidio Trust's organization and management, governing access to Presidio Trust information and records in connection with legal proceedings in which neither the United States nor the Presidio Trust is a party. This proposed rule will establish guidelines for use in determining whether Presidio Trust employees (as defined in the proposed rule) will provide testimony or records relating to their official duties. It also will establish procedures for requesters to follow when making demands on or requests to a Presidio Trust employee for official documents or to provide testimony. This proposed rule will standardize the Presidio Trust's practices, promote uniformity in decisions, conserve the ability of the Presidio Trust to conduct official business, preserve its employee resources, protect confidential information, provide guidance to requestors, minimize involvement in matters unrelated to the Presidio Trust's mission and programs, avoid wasteful allocation of agency resources and avoid spending public time and money for private purpose.

DATES: Submit written comments on or before April 20, 2009.

ADDRESSES: Send written comments to Karen A. Cook, General Counsel, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

FOR FURTHER INFORMATION CONTACT:

Karen A. Cook, General Counsel, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415.561.5300.

SUPPLEMENTARY INFORMATION: The Presidio Trust, a wholly-owned federal government corporation, on occasion receives subpoenas and other requests for documents and requests for Presidio Trust employees (as defined in the proposed rule) to provide testimony or

evidence in judicial, legislative or administrative proceedings in which the Presidio Trust is not a party. Sometimes these subpoenas or requests are for Presidio Trust records that are exempt from disclosure under the Freedom of Information Act. The Presidio Trust also receives requests for Presidio Trust employees to appear as witnesses and to provide testimony relating to materials contained in the Presidio Trust's official records or provide testimony or information acquired during the performance of the employees' official duties.

Although many other federal agencies currently have regulations in place to address these types of requests, and the Presidio Trust itself has rules governing requests for information under the Freedom of Information Act, the Presidio Trust has not adopted regulations governing subpoenas and other information requests for document production and testimony of Presidio Trust employees in judicial, legislative or administrative proceedings in which the Presidio Trust is not a party. Issues about such requests that have arisen in recent years warrant adoption of regulations governing their submission, evaluation and processing. Responding to these requests is not only burdensome, but may also result in a significant disruption of a Presidio Trust employee's work schedule, involve the Presidio Trust in issues unrelated to its responsibilities and/or impede the Presidio Trust's accomplishment of its budgetary goals. In order to resolve these issues, many agencies have issued regulations, similar to this proposed regulation, governing the circumstances and manner for responding to demands for testimony or for the production of documents. Establishing uniform procedures for submission, evaluation and response to such demands will ensure timely notice and promote centralized decision making. The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Briefly summarized, the proposed rule will prohibit disclosure of official records or testimony by the Presidio Trust's employees unless there is compliance with the rule. The proposed rule sets out the information that requesters must provide and the factors that the Presidio Trust will consider in making determinations in response to requests for testimony or the production of documents.

This proposed rule will ensure a more efficient use of the Presidio Trust's resources, minimize the possibility of involving the Presidio Trust in issues